

STATE OF CALIFORNIA
COURT OF APPEAL
FIFTH APPELLATE DISTRICT
SELF-HELP MANUAL



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Introduction

This manual describes in simple terms the civil appellate process and the related California Rules of Court (referred to in this manual as CRC) that were in effect as of January 1, 2004. The manual is for persons who represent themselves (also called “self-represented litigants” and those “in pro per” or “in pro se”) and attorneys with little or no appellate experience who are bringing civil appeals to the California Court of Appeal. It does not cover criminal or juvenile dependency appeals. The materials included here are not legal advice and should not be used as legal authority. The manual is not intended to replace the CRC, which are the legal authority for the practices described here and which are referred to throughout the text as follows: CRC, rule and a number. In the event the information here is not the same as in the CRC, you should use the CRC.

The process of appealing a civil case is presented as a series of steps. Many of the steps are in the form of questions that you need to answer in the order shown. This manual answers some questions and guides you in answering others.

In the back of this manual are the forms, for the Fifth Appellate District, that are most often used in appeals and are referred to in this manual. Each form has instructions and a blank for you to copy and use in your appeal if you wish to do so and are filing in the Fifth Appellate District. If you want to take home a **file-stamped** copy of the filed document for your personal files, you should (1) bring an extra copy if you are going to the court in person *or* (2) include an extra copy of the document and a self-addressed, stamped envelope if you are delivering your document by mail.

For filing, briefing, and/or arguing your appeal, think about hiring an attorney if you are able to do so. Bringing a case to the Court of Appeal without an attorney is hard work and takes a good deal of time. If you are self-represented, you are held to the same level of work as if you were an attorney. In most cases, you have only one chance to have the court hear your case. In addition, you must follow all of the court’s rules and procedures.¹ If you do not, your case may be dismissed. An attorney who has done some appeals and knows how to handle them will know what to do, when, and can guide your case through the court process.

¹ See CRC rules 1–80 if you are appealing from the general jurisdiction of the superior court to the Court of Appeal. Appeals from the limited jurisdiction of the superior court to the appellate division of the superior court are covered by CRC rules 100–144 and are not discussed in this manual. Rules are available at any law library, on the Internet at www.courtinfo.ca.gov/rules, and can be ordered for \$27 by calling 1-800-328-9352.

Do not expect to win if you are the appealing party. Only about 15 percent of civil appeal cases are reversed. The Court of Appeal does not retry the case; it reviews the superior court trial or hearing for errors of law. On appeal, the Court of Appeal does not take new evidence, reweigh the evidence presented in the superior court, or figure out who had the better case. The Court of Appeal does not rule for one side because it has more evidence than the other side. It rules on the *quality* of the evidence presented. The Court of Appeal does not second-guess the superior court judge or jury that ruled on the evidence and find in your favor simply because you have more witnesses or more evidence than the other side. The Court of Appeal presumes the superior court judgment is correct. Not only must there be a mistake or error of law for the case to be reversed, but the alleged mistake must have been pointed out through an objection to the superior court judge. In other words, your attorney—or you, if self-represented in superior court—must have made an objection during the trial. If there was a mistake, it has to have been big enough that it made a difference to the outcome of the case.

If you do not pay fees and file papers on time, your appeal may be dismissed as having been “abandoned” by you. This happens because the Court of Appeal assumes that if you do not take care of the things that need to be done, you are no longer interested in going forward with your case. You will always get a notice that the case is going to be dismissed before it happens so you will have a chance to do whatever is needed to keep the appeal going. But if you do not promptly do what is needed, the appeal will be dismissed. It is also important to tell the superior court, the Court of Appeal, and all counsel and self-represented parties about any change in your address or telephone number. You can do this by serving and filing a change of address with both courts.

The appeals section of the superior court processes the *Notice of Appeal* and designation of the record, prepares the record for the appeal, and certifies the record to the Court of Appeal. After you have filed your *Notice of Appeal*, the superior court will send a copy of it to the Court of Appeal, where it will be given an appellate court case number. Any papers, pleadings, or briefs you file should have this number on the cover (if you use a cover) or on the first page.

You may not visit or talk about your case with a justice or a member of his or her staff. The Court of Appeal clerk’s office will help you as much as they can, but they cannot give you legal advice or tell you what to put in your papers.

Chapter 1

Can You Appeal?

You are unhappy with a decision of the superior court. You wish to appeal to a higher court. Can you do so? The first three steps will help you decide. First you must consider whether you are a person who can appeal. Next the court must have made a judgment, an appealable order, or an order after judgment that is appealable, and you must have the paperwork to verify that. Then you must file a form called a *Notice of Appeal* by a certain deadline, letting the court know that you intend to appeal.

Step 1. Are you a person who can appeal?

Not everyone can appeal. In order to appeal, you must be “aggrieved.”

“**Aggrieved**” means the superior court or administrative agency made a decision that affects your legal rights (for example, it upheld your being fired by your employer) or costs you money (for example, ordering you to pay doctor bills for someone you hurt in a car accident that you caused). Usually you must have been a party in the case in the superior court. You may not appeal for a spouse, a child (unless you are the child’s guardian), or a friend.

Step 2. What can you appeal?

Not every court ruling is appealable. In family law and probate cases, most of the orders made in the case can be appealed right away. However, in other cases you can appeal only a **final judgment**. The court usually makes its final judgment at the end of the case. This may be a ruling by the superior court judge, with or without a hearing, or it may be after a trial with a jury.

In some instances, the court dismisses a case before it ever gets to trial. This means the plaintiff has not been able to show the court that anyone did anything legally wrong to him or her. A dismissal may come after a **demurrer**. A demurrer is a motion brought by the defendant saying that even if everything the plaintiff has said in his or her complaint is true, the complaint still does not present anything that is legally wrong or that can serve as the basis for a lawsuit. If the court agrees that there is no basis for a suit, it dismisses the case. Section 581d of the Code of Civil Procedure says all orders dismissing an action shall be treated as a judgment. Therefore, the ruling granting the demurrer (or, in legalese, “sustaining the demurrer without leave to amend”) and dismissing the case is an appealable order. Some courts do not treat the order as appealable unless the word *dismiss* is used, so you should make sure that your order actually says the matter is dismissed.

Another condition under which a case might be dismissed before trial is after a motion for summary judgment has been brought. A motion for summary judgment comes after the parties have **discovery**—they have learned the facts of what happened and developed evidence in the case. If there are no “triable issues of

material fact”—that is, there is no dispute over what the facts are—either the plaintiff or the defendant or both may bring a **motion (or motions) for summary judgment** saying the court must rule in their favor as a matter of law. This is because the trial court is the fact-finding court, and if there is no dispute about the facts, there are no facts to be found; thus, the court need only apply the law to the undisputed facts and rule for the appropriate side.

Despite the name “summary judgment,” the ruling of the court that comes after the filing of a motion for summary judgment is an **order**, not a final judgment. Unlike the situation of the demurrer—in which it is not necessary to get a final judgment—an order granting summary judgment is not appealable. The court must make a later final judgment, which is appealable.

After the trial or hearing is over *or* the superior court judge makes a ruling you need to get a file-stamped copy of the ruling you want to appeal. This ruling may be included as part of the court’s minutes, or it may be a separate piece of paper labeled *Judgment, Order* or *Order after Judgment*.²

What are the minutes? The minutes are the official court record of what happened during the case. Minutes are written down by the clerk and kept in the superior court file for your case. You can identify the minutes by looking at the bottom of the pages in your file and seeing the label “Minutes.” Among the minutes the clerk may record the court’s ruling if it is an order. Because it is presented in the minutes, it is called a **minute order**. (There is no such thing, however, as a minute judgment.) You can recognize the order because it is expressly called an order, or the language directs (orders) that something be done or the language decides or resolves a dispute. If the minute order is signed by the judge and file-stamped, it may be used as the basis of the *Notice of Appeal*.

If you do not see something in the minutes labeled “Order,” look closely through the minutes to see if the court has said that you or one of the other parties should prepare a formal judgment or order. If that is the case, you may not use the minutes but must wait until a separate document titled *Judgment, Order*, or *Order After Judgment* has been prepared, signed by the superior court judge, and file-stamped. The file stamping makes this an official court document and includes the date on which the item was stamped. You then use this as the basis for your *Notice of Appeal*.

What is a judgment or order? A judgment comes at the end of the case and has to do with one or more of the parties. As already mentioned, it may be the verdict of the jury, or it may be a ruling by the superior court judge.

² We started this section by saying that not every court ruling is appealable. Mainly judgments and orders after judgment are appealable. Orders before judgment—orders from motions ruled on before trial, or during trial before there is a judgment—may be reviewed at the Court of Appeal by a petition for writ. This procedure is very different from appeal. You can learn about it by consulting the references in Appendix 1.

If it is a ruling by the judge, it may come after a trial in which the parties decided not to have a jury, or it may be the result of a motion before trial. After the superior court judge grants a motion for summary judgment, he or she issues a judgment. In any of these cases, it is the judgment that tells what the final result of the case is—who is the “winner.” It may award money to one or more of the parties, or it may direct that something be done. For example, it might say: “Damages to the plaintiff in the amount of a zillion dollars.” All final judgments are appealable.

Instead of a judgment, you want to appeal an appealable order. As mentioned, an order is the ruling that is made after the superior court judge has heard and decided a motion. For the order to be appealable, it generally must follow a motion made in a family law or probate matter (in which most orders are appealable), a demurrer or some other motion resulting in a dismissal, or an order following a judgment.

For example, after the judgment has been entered, counsel may make a motion for attorney fees. The ruling on this motion can be appealed separately from the judgment on the case as a whole. In this example, the order would direct or deny the payment of attorney fees. If the judgment or order were in a separate document, the document would probably be titled *Judgment* or *Order* or *Order After Judgment*.

If there is no judgment in the court file, and nothing in the minutes says who is to prepare the judgment, then generally the winning party prepares the order or judgment. Before you start your appeal make sure you have a copy of this order or judgment. This court recommends that the order or judgment be signed by the judge and file-stamped in the upper right-hand corner. The date of the file stamp is the date of the entry of the judgment. (If your order is in the minutes, the date of entry is the file stamp on the minutes.) This is the date from which you count to figure out how much time you have to file your *Notice of Appeal*. (CRC rule 2(c).)

Step 3. When can you appeal?

When can you file a *Notice of Appeal*? A *Notice of Appeal* is the form you file to let the court know that you intend to appeal (Sample A). You can file a *Notice of Appeal* as soon as the order or judgment is signed by the superior court judge and file-stamped by the court clerk. The judgment is “entered” when it is file-stamped; this is also called the entry of judgment. After the entry of judgment you may want to serve and file a *Notice of Entry of Judgment* (Sample B), which, as discussed later, puts a time limit on the filing of the *Notice of Appeal*.

If an appealable order is included in the minutes, signed by the judge and file-stamped by the court clerk, it can be the basis for your appeal.

If no appealable order is included in the minutes, the person designated in the minutes or, if no one is designated, the winning party, prepares an order or judgment. In any case, you must wait to file the *Notice of Appeal* until a separate document titled *Judgment*, *Order*, or *Order After Judgment* has been prepared, signed by the superior court judge and file-stamped by the court clerk.

(CRC rule 2(c))

In some cases, no order or judgment has been prepared, no party has been directed to prepare the order or judgment or the party who was directed to prepare one has failed to do so. Then, any party may prepare an order or judgment. Most often, it will be the appellant who does so because he or she needs the order or judgment to go ahead with the appeal. If you prepare a proposed order or judgment, you must serve it (as discussed later) on opposing counsel and on the superior court. Ask for opposing counsel’s approval as to form within a certain number of days say, 10 or 15.

If opposing counsel approves, take or mail the approval along with the proposed judgment or order to the superior court department where your case was heard. Ask the judge to sign it and the clerk to file-stamp it.

If opposing counsel does not approve the judgment or order or does not respond to your request for approval, the superior court will hold the proposed judgment for 20 days from the date of service. At the end of the 20 days the court may sign the order or judgment, hold a hearing, and/or make changes in the proposed order or judgment. In any case, the court will mail you a signed, file-stamped copy. It is this order or judgment that this court recommends you use as the basis of your appeal.

What factors affect the time of filing? The time allowed to file a *Notice of Appeal* depends on whether there was a notice of entry of judgment and, if so, when it was mailed or served *or* whether there was a timely motion (for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration) that, when denied, extends the time.

What is notice of entry, and how does it affect the time of filing? Judgment is entered when the court clerk file-stamps the appealable order or judgment. The parties may not know the exact date when this was done. The court clerk or any party may provide notice that the judgment was entered. The clerk may do so by

mailing a *Notice of Entry of Judgment (or Order)* or a copy of the judgment or order to the person filing the *Notice of Appeal*; any party may provide *Notice of Entry of Judgment* by serving (as discussed later) each of the other parties with either (1) a *Notice of Entry of Judgment* (Sample B) or (2) a file-stamped copy of the judgment. A *Proof of Service* (discussed later—see Sample C) must be attached to either document. If either the clerk mails the notice of entry or the party has served the notice of entry, the *Notice of Appeal* must be filed within 60 days of the date of (1) the court clerk’s mailing or (2) the party’s serving a copy of the judgment, minutes, or *Notice of Entry of Judgment*. (CRC, rule 2(a).)

What if there is no notice of entry of judgment? If there is no notice of entry, the appellant has 180 days after entry of the order or judgment to file the *Notice of Appeal*. (CRC rules 2(a), 2(c).) Even if there are extensions (see next section), the *Notice of Appeal* may not be filed if 180 days have passed since the entry of the order or judgment (recall that this is the date stamped in the upper right-hand corner of the judgment or order).

What motions will extend the time to file? The time to file the *Notice of Appeal* may be extended by 30 days if there is a timely motion:

- ▪ For new trial,
- ▪ To vacate (or set aside) the judgment,
- ▪ For judgment notwithstanding the verdict, or
- ▪ To reconsider an appealable order. (CRC rules 3(a)–(d).)

The time limits for filing these motions are set out in Code of Civil Procedure sections 659 (for motion for new trial), 663a (for motion to vacate the judgment), 629 (for motion for judgment notwithstanding the verdict), and 1008(a) (for motion to reconsider an appealable order). These extensions apply whether or not a notice of entry has been served. The 30-day extension runs from the mailing or service of the denial of the motion or generally from denial of the motion by operation of law. (See CRC rule 3.)

**If the *Notice of Appeal* is late in a civil case,
the appeal must be dismissed.**

Chapter 2

Filing the Notice of Appeal

Now that you have determined that you *can* file an appeal, the first thing you need to do is file and serve your Notice of Appeal. Step 4 will tell you how to do this, how much it will cost and what happens if you do not pay on time.

Step 4. How does the appellant prepare the Notice of Appeal?

Look at the exhibits and instructions for Sample A at the back of this manual. In the upper left-hand corner of the form is the place where the name and address of the attorney or the self-represented appellant goes. Below that is the name of the case (the **caption**) as it appeared on the papers in the superior court. The case number (item 7) is the superior court number. The appellant fills in the judgment and/or order that is being appealed and the date of the entry of judgment or order. The appellant, the attorney for the appellant, or the self-represented appellant bringing the appeal signs the *Notice of Appeal*. Once appellant has completed the *Notice of Appeal*, a copy must be “served on” all parties and the original must be filed with the superior court appeals section.

What is service? Service of documents means mailing or hand-delivering. You let the parties know what you are doing by having copies of the documents you plan to file with the court—in this case, the *Notice of Appeal*—mailed or hand-delivered to them. **Copies of all of the documents you prepare should be served on all counsel and self-represented parties, and the original filed with the court.** A document may be hand-delivered or mailed only by someone who is over the age of 18 and is not a party to the lawsuit. For example, if you are self-represented in an appeal, you cannot hand-deliver or mail your *Notice of Appeal* to the parties. Someone else, an adult who is not a party, must do it for you.

How do you know the document was served? Sample C is a *Proof of Service* which must be filled out and attached to each document you file. Depending on whether you are having service done by mail or in person, the person doing the service needs to fill out the *Proof of Service* properly. The originals of the *Notice of Appeal* and *Proof of Service* are filed with the **appeals section** of the superior court. (CRC rule 1(a).) For the locations of superior courts within the jurisdiction of the Fifth Appellate District, see Appendix 2.

Is there a charge for filing an appeal? The appellant must include a \$655 filing fee by check, money order, or cash along with the *Notice of Appeal* unless the appellant has a fee waiver. A check or money order should be made payable to “Clerk, Court of Appeal.” A second check or money order for \$100, made payable to “Clerk of the Superior Court,” must also be included and is a deposit for the clerk’s transcript. This second check need not be included if you, as appellant, plan to prepare an appendix under rule 5.1, described later.

Will the court waive the filing fee? If you, as appellant, have a fee waiver from the superior court for the case number(s) you are appealing, and it was granted within the last 6 months, include a copy of the fee waiver with the *Notice of Appeal*. If you, as appellant, did not get a fee waiver in superior court, you may apply to the Court of Appeal for a waiver under rule 985. (CRC rule 1(b).) A fee waiver allows persons below a certain income level to file their appeals without paying the filing fee. (See Sample D for information on fee waivers.)

What happens if fees are not paid? If these fees are not paid or waived, or if the appellant's check bounces, the court gives the appellant notice that he or she has 15 days to pay the fee or have it waived before the appeal is dismissed. If the matter is dismissed, the court may, upon a motion, reinstate the appeal if there is a good reason why the payment is late. (CRC rule (1)(c).) If the court grants the motion to reinstate the appeal, it gives a specific time for payment(s) to be made.

Chapter 3

Preparing the Record

After filing the *Notice of Appeal*, the appellant next needs to specify what items are to be in the **record** (the official account of what went on at the hearing or the trial that is now being appealed). This is called “designating the record” and must be done in every case. The record includes the reporter’s transcript and the clerk’s transcript. The **reporter’s transcript** is a word-for-word record of everything that went on during the hearings or trial; it is taken down by a certified court reporter, who then types it out (transcribes it) for the appeal. The **clerk’s transcript** can include anything that is in the superior court file—the papers that were filed, the orders that were made, the things that were done. A reporter’s transcript is optional. A clerk’s transcript or substitute is required. (The substitute can be a CRC rule 5.1 appendix or a CRC rule 5.2 stipulation to use the superior court file.)

If the superior court is going to prepare the record, the appellant needs to tell the court what items are to be included in the record within 10 days of the filing of the *Notice of Appeal*. The appellant does this by completing a *Notice Designating Record on Appeal* form (Sample F). This form shows the court whether the appellant is designating a clerk’s transcript, a CRC rule 5.1 appendix, or a rule 5.2 stipulation *and* whether a reporter’s transcript is needed. For a court-prepared clerk’s transcript and/or a reporter’s transcript, the appellant must identify the specific items to be included. What is to be included will depend on the issues the appellant is planning to talk about on appeal. These issues, in turn, will depend on which rulings the appellant believes were so wrong that the judgment or order should be overturned. The appellant needs to think about the trial, what rulings may have been wrong, and what part of the record will best tell the Court of Appeal why these rulings were wrong. These are the items the appellant should “designate for the record.”

Step 5. Getting the reporter’s transcript

What is a reporter’s transcript? The reporter’s transcript is a word-for-word typewritten record of everything that was said in court during the trial or hearing.

When is it necessary? The appellant should request a reporter’s transcript if what was said at the trial or hearing relates to the issues the appellant wants to talk about on appeal. If what was said at the trial or hearing has nothing to do with the issues for the appeal and the appellant does not want it typed up, the appellant does not need to request a reporter’s transcript.

How soon do you have to ask for it? Within 10 days of the filing of the *Notice of Appeal*, the **appeals section** of the superior court must be told whether the appellant does or does not want a reporter’s transcript.

What if the appellant is *not* requesting a reporter's transcript? The appellant should notify the **appeals section** of the superior court in writing that no reporter's transcript is needed or check the proper box on page 1 of the *Notice Designating Record on Appeal* (Sample F). This document must be served on the respondent. If the appellant does not ask for a reporter's transcript, the respondent may not ask for one, either. The Court of Appeal, however, may—on its own motion or on the motion of the respondent—order the preparation of the reporter's transcript in the interests of justice. (CRC rule 4(a)(3).)

What if the appellant is requesting a reporter's transcript? Make a list of the days, times, departments, and names of the court reporters for each day that is to be typed up (transcribed). Information on the reporters, days, times, and departments can be found in the minutes located in the Superior court file. This list must be filed with the clerk of the **appeals section** of the superior court. Page 3 of the form *Notice Designating Record on Appeal* (Sample F) may be used for this purpose. In addition, you must set out the issues that you intend to raise on appeal. (CRC rule 4(a) & 4(e).)

The *Notice Designating Record on Appeal* must be served on the respondent(s) and all known court reporters. The original must be filed with superior court **appeals section** within 10 days of the filing of the *Notice of Appeal*. It must have with it a *Proof of Service* on respondent(s) and reporter(s) and a deposit to pay for the reporter's transcripts. (CRC rule 4(a).)

If the appellant does not provide everything needed in the *Notice Designating Record on Appeal*, the superior court sends a notice to the appellant asking him or her to provide what is needed to correct the problem.

If, after being served with the appellant's *Notice Designating Record on Appeal*, the respondent wishes to designate additional parts of the transcript, a respondent's designation or *Notice Designating Record on Appeal* must be served and filed with the superior court **appeals section** within 10 days of the service of the appellant's designation. (CRC rule 4(a).)

How much does the reporter's transcript cost? The cost of the reporter's transcript depends on how many days or hours the reporter is asked to transcribe. A deposit of the transcript's approximate cost should be made at the same time the *Notice Designating Record on Appeal* is filed. (CRC rule 4(b).) The appellant can ask the reporter to give him or her a written estimate in advance. The rate is \$650 per day for each day in which there were more than three hours of proceedings, plus \$325 per day for each day in which there were less than three hours of proceedings. If the reporter's estimate does not end up covering all of the days, the appellant needs to deposit \$650 or \$325 for any day not covered. If the court reporter has given the appellant a written waiver of the deposit for fees, the appellant can submit the waiver instead of a money deposit. If the appellant has already had some or all of the proceedings transcribed, a certified copy of the transcript can be substituted for the deposit. The appellant should be sure to keep a copy of this transcript for writing the brief. The clerk should not file the *Notice Designating Record on*

Appeal unless the money deposit, the waiver of deposit, or a certified copy of the transcript is included. If the deposit runs short, the reporter contacts the appellant about how much more is needed. (CRC rule 4(b).)

Please note that a *waiver of deposit* is merely that. It waives only the need for the deposit, not the cost of the reporter's transcript. It may occur when the appellant has paid the reporter for part or all of the transcript in advance and there is no need for the deposit.

What if the appellant has no money? The appellant may apply to the superior court for a waiver of the reporter's fees. (See Sample D) You will need to fill out the *Application for Waiver of Court Fees and Costs* (Sample D). Follow the instructions provided. Waivers of reporter's transcript fees are rarely granted.

The Court of Appeal has the power only to waive its own filing fee of \$655.

How long does it take to get the transcript? Generally, it takes 30 to 60 days after the reporter is notified to get the transcript. The Court of Appeal may grant extensions of time for the reporter if he or she is unable to complete the transcript on time. (CRC rule 4(f).)

Is there a cheaper way to go? Not really. However, use of an "agreed" or "settled" statement is authorized under the CRC. The requirements are set out in CRC rules 4(g), 6, and 7(a), and are rarely used.

Step 6. The clerk's transcript

What is the clerk's transcript? The clerk's transcript is a "book" that includes copies of papers filed in the superior court case file that have to do with the issues being raised on appeal. If you ask the superior court to prepare these papers, the result is a clerk's transcript. If you prepare them yourself, the result is called an **appellant's appendix** or a **5.1 clerk's transcript** (after the CRC rule creating it). If the parties agree and the court permits, you can use the superior court file as a substitute for a clerk's transcript. Each of these options is discussed below.

What is in the clerk's transcript? The papers you designated on your *Notice Designating Record on Appeal* are arranged chronologically—that is, in the order in which they were filed in the superior court, beginning with the first papers filed in the case and ending with the last papers filed in the case. After the papers are arranged in order, they are numbered in sequence. The clerk prepares two indexes and inserts them at the beginning of the transcript. One index lists the papers in the order they were filed, and the second index lists the papers in alphabetical order. Each index includes the page numbers and, if there is more than one volume, the volume number where the papers can be found in the transcript. A cover is prepared, and everything is then bound in book form.

Who puts together the clerk’s transcript? The clerk of the superior court creates the clerk’s transcript. The documents to be included, as specified in CRC rule 5, must be listed (designated) on the *Notice Designating Record on Appeal* form (Sample F). The cost to the appellant depends on the number of pages and the number of volumes.

What if you want to prepare an appellant’s (5.1) appendix? If the appellant does not want the superior court clerk to prepare the clerk’s transcript, he or she gives notice to the superior court that he or she wants to prepare an appellant’s appendix, or 5.1 appendix. Instructions for preparing the appendix are set out in CRC rule 5.1.

How do you let others know which kind of record you have selected? Prepare a *Notice Designating Record on Appeal* (Sample F). There are four choices for record preparation: (1) appendix and reporter’s transcript, (2) appendix only (no reporter’s transcript), (3) clerk’s and reporter’s transcripts, and (4) clerk’s transcript only (no reporter’s transcript). Check the appropriate box on the form. If you choose to have the superior court prepare a clerk’s transcript, fill out page 2 of the *Notice Designating Record on Appeal*. This page is where you list the documents from the superior court file that you want included in the clerk’s transcript, as described in a later section. If you choose to have a reporter’s transcript prepared, fill out page 3 of the *Notice Designating Record on Appeal* as noted earlier. The original *Notice Designating Record on Appeal* is filed in the **appeals section** of the superior court. It must be accompanied by a *Proof of Service* showing that all counsel and self-represented parties were served. If a reporter’s transcript has been requested, the court reporter needs to be served. (CRC rule 5.)

How soon does the notice need to be served and filed? The *Notice Designating Record on Appeal* with *Proof of Service* must be served on all counsel, self-represented parties, and reporters if a reporter’s transcript has been requested. It is filed with the **appeals section** of the superior court within 10 days of the filing of the *Notice of Appeal*.

What if the respondent also wishes to designate the record? Within 10 days after the appellant has filed his or her notice designating the clerk’s transcript, the respondent may serve and file a notice in superior court designating any additional documents the respondent wants included in the transcript. (CRC rule 5(a).)

Option 6a: Having the superior court prepare the clerk’s transcript

How much does it cost? If the superior court is preparing the clerk’s transcript, the cost depends on how many pages there are. The superior court charges a copying fee based on the number of pages designated, and a volume fee based on the number of volumes in the clerk’s transcript. Unless the superior court waives appellant’s

fees, the appellant should have made a \$100 deposit toward the cost of the clerk's transcript at the time he or she filed the *Notice of Appeal*. The deposit is used first. If the total cost ends up being more than \$100, the superior court gives all parties a written estimate. The appellant and any party wishing to have its own copy of the clerk's transcript must pay the cost within 10 days. A person who is unable to pay for the clerk's transcript can file with the superior court an application for a waiver of the clerk's transcript fees. (CRC rule 5(c).)

The appellant pays the entire cost of the clerk's transcript.

What happens if fees are not paid? If fees are not paid, the superior court sends a notice (called a *Notice of Default*) telling the appellant to pay within 15 days or the appeal may be dismissed. (CRC rule 8(a).) If the fees are not paid within 15 days, the superior court sends to the Court of Appeal a declaration stating that appellant has failed to cure the default. The Court of Appeal then dismisses the appeal.

How does one designate the clerk's transcript? To designate the clerk's transcript, prepare a *Notice Designating Record on Appeal*. The designation must include a list of the documents the superior court clerk is to copy for the clerk's transcript (Sample F). This list should include the exact title of each document and the date it was filed or lodged with the superior court. If the date on which the document was filed is unknown, use the date the document was signed. The appellant does not have to individually designate each jury instruction or minute order. You can list "all" jury instructions and "all" minutes.

All exhibits, whether admitted into evidence or refused, are considered part of the clerk's transcript. If some or all of the exhibits are needed in the appeal, the ones to be used are designated, and most often transmitted to the court under CRC rule 18, after the respondent's brief is filed. However, if a party wants one or more of the exhibits copied and put in the clerk's transcript to be available while the briefs are being written, the exhibits to be included must be noted by number or letter in the *Notice Designating Record on Appeal*.

Within 10 days after service of appellant's designation, the respondent may provide a list of additional items to be included in the clerk's transcript. (CRC rule 5(a).) This list must also be specific as to the title of each document and the date it was filed. After the respondent's designation is filed, or the time to file has passed, the superior court appeals clerk locates the documents listed by both the appellant and the respondent and determines the cost of preparing the clerk's transcript. The superior court appeals clerk then notifies the appellant of the estimated cost of the clerk's transcript and, upon payment, begins to prepare it. The appellant pays the entire cost even when the respondent has designated items to be included. Whether designated or not, the clerk's transcript includes:

- ▪ The Notice of Appeal;
- ▪ The judgment or order being appealed and any notice of entry;
- ▪ Any notice of intention to move for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for motion for reconsideration; and
- ▪ Any notices or stipulations to prepare the clerk's or reporter's transcripts or to proceed by agreed or settled statement (CRC rule 5(b)).

How does the respondent get the record? The respondent does not automatically get a copy of the record. If he or she wants a copy of the clerk's and/or reporter's transcript, the request must be made promptly. The superior court appeals clerk will provide the respondent with an estimate of the cost to prepare the clerk's transcript. (CRC rule 5(c).) The respondent has 10 days to pay. If the respondent wants a copy of the reporter's transcript, he or she should contact the reporter personally to arrange payment.

If the respondent does not wish to have to pay for his or her own copy, he or she may borrow the appellant's copy after notifying the appellant no more than 20 days after the record is filed in the Court of Appeal. The record is lent to the respondent when the appellant's opening brief is served, and returned to appellant when the respondent's brief is served. (CRC rule 11.)

When is the record sent to the Court of Appeal? Within 30 days after the appellant deposits money for costs or the court files an order waiving costs, the clerk's transcript should be ready. The superior court clerk should then send a copy of the transcript to the Court of Appeal and the appellant. (CRC rules 5(d), 11(a), (b))

Option 6b: Preparing an appellant's appendix

If any party elects to prepare an appendix instead of asking the superior court to prepare a clerk's transcript, the appeal proceeds by "appendix." If the other party wants a clerk's transcript, that party must file a motion in superior court contesting the choice of an appendix. The motion must be filed within 10 days after the *Notice Designating Record on Appeal* is served. (CRC rule 5.1(a).)

How much does it cost? If the appellant is preparing his or her own appendix (CRC rule 5.1), there will be copying and binding costs.

How does one designate an appellant's appendix? Within 10 days of filing the *Notice of Appeal*, the appellant must file his or her intention to proceed under "rule 5.1," along with a *Proof of Service* on each of the other parties. The appellant gives notice of his or her intention by checking a box on the first page of the *Notice Designating the Record on Appeal* form (Sample F).

What is included in a “5.1 appendix”? The appendix should include the following items:

- ▪ A chronological index of all of the items in the appendix (Sample H).
- ▪ An alphabetical index of all of the items in the appendix (Sample I).
- ▪ All documents necessary for the consideration of issues in the appeal.
- ▪ The judgment or order being appealed and any notice of its entry, any notice of intention to move for a new trial; any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration and the rulings thereon; and any order on such motion and any notice of its entry.
- ▪ The *Notice of Appeal*; the notice to prepare the clerk’s and reporter’s transcripts, or the settled statement, or *Notice Designating Record on Appeal* form; any notice of election to proceed by an appendix under CRC rule 5.1 and, for a joint appendix, the stipulation designating its contents; any stipulation to proceed by agreed statement under CRC rule 6, along with the agreed statement; and any settled statement approved by the court under CRC rule 7.

All exhibits admitted in evidence or rejected are considered as part of the appendix even if they are not physically included in the bound volumes. (CRC rule 5.1(b).) They can later be lodged with the Court of Appeal by transmitting them under CRC rule 18.

How does one put together an appendix?

1. Make copies of the documents that are related to the appeal. Photocopy on one side only, on recycled paper.
2. Arrange the documents in the order in which they were filed in the superior court (chronologically), and number the pages one after the other, beginning with page 1.
3. Make a chronological index of all documents by listing them in the order filed, with the first page number for each document and, if there is more than one volume, the volume number. (See Sample H.)
4. Make an alphabetical index of all the documents by listing them in alphabetical order, with the first page number of each document and, if there is more than one volume, the volume number. (See Sample I.)
5. Prepare a cream-colored cover (see Sample G). The cover should state the case title and superior court case number, the Court of Appeal number, the name of each of the participating Superior court judges, the names and addresses of appellate counsel for each party or any self-represented party, the volume number, and the inclusive page numbers (for example, 1—246) of that volume. It should be titled *Appellant’s Appendix* (if prepared by the appellant), or *Joint Appendix* (if prepared jointly by appellant and respondent), *Respondent’s Appendix* (if prepared by respondent), or *Appellant’s Reply Appendix*. (CRC rule 5.1(c), 9(a), (b), (c).)

6. Put the materials together: cover, chronological index, alphabetical index, and documents in chronological order. There is a 300-page limit for each volume of a clerk's transcript.
7. Make the necessary number of copies (one for each party, one for the court, and one for yourself), and bind the original and each of the copies into transcript (book) form. The appendix should be bound on the left side, in volumes of 300 pages or less. The appendix may not be bound with the brief.

When does the appendix need to be ready? A **joint appendix** is prepared jointly by the parties, *or* the appellant and respondent may each prepare his or her own appendix. A joint appendix or an appellant's appendix must be served on the respondents and filed with the court at the same time as the appellant's opening brief. A respondent's appendix, if any, must be served on the appellants and filed with the court at the same time as the respondent's brief. An appellant's reply appendix, if any, must be served on the respondent and filed with the court at the same time as the appellant's reply brief. In filing an appendix you are certifying that the papers included are true and that correct copies of documents filed or lodged with the superior court. (CRC rule 5.1(d), (f).)

Option 6c: Using the superior court file

When can the superior court file be used in place of a clerk's transcript? If the reviewing court permits it, the parties may agree (stipulate) to use the superior court file instead of the usual clerk's transcript by filing, the stipulation in the **appeals section** of the superior court within 10 days of filing the *Notice of Appeal*. The Court of Appeal in Fresno permits the use of the superior court file. The appellant and respondent must both sign the stipulation to use the superior court case file. (CRC rule 5.2(a).)

Within 10 days of filing the stipulation, the superior court will notify you of how much it will cost to put the file in chronological order, number the pages, and prepare a chronological index. You must pay within 10 days of receiving the estimate.

If the parties stipulate to use the superior court file instead of the clerk's transcript, the superior court file is sent to the Court of Appeal. The appellant and respondent will receive only an index of the documents in the file. (CRC rule 5.2(a), (b).)

Record problems

What happens if you do not pay costs on time? If you have not made the required payments, the superior court will notify you by sending you a notice of default.

What is a notice of default? A notice of default says that someone did not do what the CRC said to do. Generally something was not done on time or was done incorrectly. The notice gives the responsible person a certain number of days from the date of the notice to do what needs to be done. Notices may be sent by the

superior court or the Court of Appeal, depending on what the problem is. Examples of defaults in the superior court having to do with record preparation are: failing to file a *Notice Designating Record on Appeal*, failing to pay the costs of the clerk's and/or reporter's transcript, and failing to correct the designation after notice was sent to the party by the superior court. (CRC rule 8.)

What if the default is not corrected? A party has 15 days from the date of the notice to resolve the problem. If the things to be fixed are still unresolved after the 15 days, the superior court sends a declaration to the Court of Appeal stating the party has failed to cure the default. If the appellant is the party who has not complied with the rules, the appeal may be dismissed by the Court of Appeal; if the respondent is the party that has not complied on time, the appeal may go forward on the appellant's record alone. (CRC rule 8(b).)

What if something is missing from the record? In working with the record, a party may discover things that are missing or things that were overlooked in the designation or in the preparation of the clerk's transcript. If the clerk or reporter omitted a required or requested item, serve on the parties and file in the superior court a *Notice of Correction* requesting that the omitted matter be prepared and sent to the Court of Appeal. (CRC rule 12(b).) If the item was not listed in the designation of record, a motion to augment will be needed. (See the section on motions in Chapter 6.)

Filings in the Court of Appeal and the superior court can be made in person or by mail. See Appendix 2 for addresses.

**After the record is filed in the Court of Appeal,
everything filed with the Court of Appeal must be
accompanied by a *Proof of Service*.**

CHAPTER 4

Civil Case Information Statement

Step 7. Preparing the Civil Case Information Statement

A *Civil Case Information Statement* (Sample J), also called a Docketing Statement, is a questionnaire about the case that appellants and cross-appellants, if any, must fill out and return to the Court of Appeal for all civil cases except juvenile dependency cases. It asks what type of case it is, whether and when there was notice of entry of judgment, whether there is a bankruptcy stay, and other questions. The answers on the *Civil Case Information Statement* help the court to know whether the *Notice of Appeal* is on time and whether the order or judgment is appealable.

The *Civil Case Information Statement* must be filed in the Court of Appeal within 10 days after the clerk mails you a notice that the form must be filed. A copy of the judgment or order being appealed and a *Proof of Service* of the *Civil Case Information Statement* on all parties to the appeal must be attached to the *Civil Case Information Statement* and filed with the Court of Appeal. (CRC rule 1(f).)

CHAPTER 5

Briefing the Case

An appellate brief is a written argument by the appellant or respondent that explains why the superior court acted correctly or incorrectly. Once the record is prepared, it is time to prepare a brief.

There are three briefs: (1) the appellant's opening brief, (2) the respondent's brief and (3) the appellant's reply brief.

- The appellant's opening brief tells the Court of Appeal what judgments or orders the appellant is appealing, why the appellant thinks the superior court acted incorrectly in making those judgments or orders, how the court's actions hurt the appellant, and what the appellant wants the Court of Appeal to do about it if it finds the superior court acted incorrectly.
- The respondent's brief responds to each of the issues raised by the appellant, showing why the appellant's arguments are not correct and expressing support for the trial court's decision.
- The appellant's reply brief addresses the arguments made by the respondent and shows how they do not overcome the arguments made in the appellant's opening brief. No new issues may be raised in the reply brief.

We will discuss each of the briefs separately and then the items needed in all the briefs.

Step 8. Preparing your brief

Appellant's Opening Brief

When is the appellant's opening brief due? The appellant's opening brief is due 30 days after the Court of Appeal notifies the appellant that the clerk's and reporter's transcripts have been filed in the Court of Appeal. If the appellant prepared his or her own transcript and did not request a reporter's transcript, the appellant's opening brief and appendix are due 70 days from the date appellant filed the rule 5.1 election in the superior court. (CRC rule 15(a).) In either case the Court of Appeal sends a notice to appellant that says when the appellant's opening brief is due.

How does the appellant prepare the opening brief? Sample K is a short example of an appellant's brief. The appellant uses the facts in the case as determined by the jury or the court at the trial or hearing in superior court. In this example there was no trial, and we have used the "facts" from *Goldilocks and the Three Bears* as our case. There are only one or two items in our statement of authority and only one

issue. Hopefully this example from a familiar story will be helpful as you prepare your tables of contents and authorities and set out the facts and issues of your case. You may find it useful to follow along in the sample brief as you read about the various parts of a brief in the sections that follow.

The appellant's opening brief includes a table of contents, table of authorities, a statement of the case, a statement of appealability, a statement of facts, a statement of issues, and a conclusion.

The brief starts with a cover sheet, which is merely a photocopy of the cover on white paper. This is followed by the table of contents, which lists the sections of the brief by page number. Then there is a table of authorities, which lists the cases (in alphabetical order), the statutes and other authorities used in the brief, and the number of the page on which each can be found in the brief. These items cannot be completed until the brief is completed, for only then will the page numbers be known.

The next item is a **statement of the case**. This tells the Court of Appeal the procedural history of the case. It should tell the story of the motions, hearings, and orders that are relevant to the issues of the case, including the date on which the complaint was filed and the date on which the *Notice of Appeal* was filed. (See "Statement of the Case" in Sample K.) The appellant must show where this information can be found in the record by referencing the page number(s) of the clerk's or reporter's transcript that has this information. The reference is set out in parentheses as **CT** (clerk's transcript) or **RT** (reporter's transcript). For example: "The complaint in this case was filed on December 25, 2000. (CT 1)." The "(CT 1)" tells the court it can find the first page of the complaint (which will have the file stamp with the date the complaint was filed on it) on page 1 of the clerk's transcript.³

Next comes the **statement of appealability**, where the appellant tells the court why this case is now appealable. This may already be clear to the appellant, but for the person reading the brief for the first time, the statement sets the stage. The case may be appealable because there is a judgment or order of dismissal (after demurrer or other motion) and the case is finished, *or* there may be an order (usually one after the judgment, or after a hearing in a family law or probate case) *or* there may be a nonfinal judgment. If you are appealing an order or a nonfinal ruling, you need to explain why it is appealable. (CRC rule 14(a); Code of Civil Procedure, section 904.1.) Generally, an appellant states the statute that gives him or her the right to appeal the case. (See "Statement of Appealability" in Sample K.)

³ Other sources that may be referenced are abbreviated as follows:

Appellant's appendix—AA	Appellant's reply appendix—ARA
Joint appendix—JA	Appellant's opening brief—AOB
Respondent's appendix—RA	Respondent's brief—RB
Appellant's reply brief—ARB	Superior court file—SC file

Then the appellant should set out the facts of his or her case. Before starting on the facts, the appellant should read through the entire record (the reporter's transcript, clerk's transcript or appendix, and exhibits, if any). The appellant may use only the information in the transcripts to prepare the statement of facts, because they are the only items the court and/or jury could use to determine the case in the superior court. Remember, the Court of Appeal is not a fact-finding court—fact-finding is what the superior court does. As noted earlier, the Court of Appeal does not change the facts that were found by the superior court judge or the jury. If the record includes conflicting facts (for example, one witness said the light was green, and the other said it was red,) the Court of Appeal presumes the superior court or the jury's findings on the facts are correct. The Court of Appeal does not change the judge's or jury's decision about whom to believe if the witnesses disagreed about what happened. So the appellant should state the facts in the way that supports the judgment or order. The appellant should tell his or her story but should base it only on those things told to the judge or jury, and in a way that fits in with the judgment. (See "Statement of Facts" in Sample K.) For every statement of fact the appellant makes, there should be a **citation** showing where that information can be found in the record (the reporter's transcript, clerk's transcript or appendix, or exhibits); for every statement of law, there should be a citation to a case, statute, rule, or legal treatise that sets out that proposition. Citations follow the statement and are put in parentheses. (See Appendix 3.)

Special considerations for demurrer and summary judgment. Demurrers and summary judgments are two types of cases that may be dismissed before they get to trial. The facts in these cases are treated a little differently.

Demurrer. If a plaintiff files a case and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a **demurrer** asking that the case be dismissed. If a cause of action *has been* stated, the court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer "with leave to amend," in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. This ruling is an order but, by statute, may be appealed. (Code of Civil Procedure, section 581d.) The order must say the case is dismissed. On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action.

Summary judgment. In a **summary judgment**, one party may contend there are no facts that need to be decided, *or* the parties may agree on what the facts are. Since the superior court is a fact-finding court and there are no facts to be found, the Court of Appeal can determine how the law applies to the facts as stated, and rule in favor of the plaintiff or defendant. Either side (and sometimes both sides) may bring a motion for summary judgment. Unless the parties agree that there are no

factual issues—that is, there is no dispute about any of the facts in the case—the court must first make a point of determining that there are none. The court looks to see if there are no differences in the reports of the facts and thus no facts that need to be determined. For example, if all the evidence shows that the light was green, the court does not need to determine whether the light was red or green.

If that is not the case, and there are facts that need to be decided, the summary judgment motion is denied and the matter continues on to trial, at which time the judge or jury decides the facts. If there are no factual issues, the court may grant summary judgment for one party or the other. This ruling is an order. A party seeking to appeal the ruling must first get a *judgment* based on that ruling. In looking at the facts on appeal, the question is whether there is a dispute as to the facts. If there is a factual dispute, summary judgment should not have been granted and the case should go back to the trial court for a determination of the facts.

Having already written down the facts, write down each of the errors you believe the superior court made. These are the **issues** that need to be discussed in light of the facts and the laws. The appellant has the burden of showing that there was an error so serious that the court’s decision must be reversed. In figuring out the issues, think about what happened at the trial or hearing where the alleged errors were made. Did these errors involve findings of fact, discretionary rulings by the judge, or questions of law? Do you think these rulings were really wrong? What did these rulings do to the outcome of your case?

You may need to read some legal materials on the subject. If so, go to a public law library. (See Appendix 2 for information on library locations and hours.) Look at books that are written about the area of law that your case involves. For example, if your case involves a possible breach of contract for work that was not done or work that was not done properly look in the area of contract law. Ask the librarian to suggest readings about contracts and breaches of contract. In books written about the law (“secondary sources”), you will find mention of cases previously decided in the area of contracts. You may want to read those cases. They may tell you which laws apply to your case. Based on this information and the facts of the case, the appellant should make a list of the issues he or she wants to raise—the issues the appellant thinks hurt his or her case in superior court the most or the ones that would help his or her case the most now.

After making a list of the issues, the appellant then needs to determine what standard of review the court will apply to each issue.

What is the standard of review? When the Court of Appeal reviews an issue, it needs some kind of rules or guidelines to determine whether the superior court made an error in its decision. Different kinds of rulings require different kinds of review guidelines. These guidelines are called **standards of review**. When the appellant argues that the superior court erred in its ruling, the Court of Appeal looks first at what the standard of review is for that particular issue. The three most common standards of review are (1) abuse of discretion, (2) substantial evidence, and (3) de novo review.

When is the “abuse of discretion” standard used? If the superior court’s decision is one that involved the exercise of its discretion, the “abuse of discretion” standard is used. Any decision for which the judge exercises his or her discretion, such as admissibility of evidence or issuance of restraining orders, comes under this standard. Abuse of discretion occurs when the superior court judge makes a ruling that is arbitrary or absurd—which does not happen very often.

When do you use the “substantial evidence” standard? If the decision being reviewed concerns a ruling in superior court by the judge or the jury having to do with the *evidence*—most often dealing with a factual determination—the “substantial evidence” standard is used. The Court of Appeal reviews the record to make sure there is substantial evidence to support the factual finding the court or jury made. In doing so, the court focuses on the quality, not the quantity, of the evidence. If there is a conflict in the evidence, the Court of Appeal uses the evidence that supports the ruling made in the superior court. Since the judge or jury at the trial saw the witnesses and heard what the witnesses said, they were in a better position to decide what actually happened and who is telling the truth.

What is the *de novo* standard? *De novo* is a Latin phrase meaning “from the beginning.” In *de novo* review, the Court of Appeal looks at the issue as if the superior court had never ruled on it. This type of review is generally limited to issues involving questions of *law*. If the issues involve questions of law—for example, the interpretation of a contract or a statute—the Court of Appeal does not assume the superior court’s ruling is correct but looks at the issue “from the beginning,” exercising its independent judgment.

Once you determine which standard of review applies to the issue, you must point out why you think the court made the wrong decision and why you are entitled to reversal under that standard of review. Explain why this incorrect decision harmed your case so much that the error should cause the superior court’s order or judgment to be reversed. Include the names of any books as well as cases and statutes, along with the titles of the books in which you found them, that support your position. For more information on legal citations, see Appendix 3.

Think of the discussion as a book in which each issue is a separate chapter. Set off each issue with a heading similar to a chapter title, and subheadings if needed, describing the arguments that will follow. (CRC rule 14(a). (See “Argument” in Sample K.)

After the appellant has discussed each issue, he or she should briefly restate in a conclusion his or her position and what he or she wants the court to do. (See “Conclusion” in Sample K.)

Respondent’s Brief

When is the respondent’s brief due? The respondent’s brief is due 30 days after the appellant’s opening brief is filed. (CRC rule 15(a).) There is no five-day extension if the appellant’s opening brief was filed by mail. (Code of Civil Procedure, section 1013(a).)

How do you prepare the respondent's brief? If you are the respondent, you will need to address the facts and legal issues raised in the appellant's opening brief. First of all, make sure (1) there is a final judgment, if the appeal is from a judgment, or (2) the order is appealable, if the appeal is from an order and (3) the *Notice of Appeal* was filed on time, or "timely filed."

Does there need to be a facts section? The facts are already set out in the appellant's opening brief. However, remember the decision is in the respondent's favor and the facts must be set out to support the winning side of the case. Make sure the facts, as stated by the appellant, are accurate and any conflicts in the facts have been resolved to support the decision. You may end up with a shorter version of the facts. If you totally agree with the way the appellant has set out the facts, you can ask to adopt those facts as yours. As with the appellant's opening brief, you need to make a reference to the record for every fact and for every legal statement, and provide headings and subheadings for each point. (CRC rule 14(a).)

What about the issues the appellant has raised? The respondent has the burden of responding to the issues raised by the appellant and showing that the ruling of the trial court was correct. If it was not correct you, as respondent, must show that the mistake the court made was so small that there was no prejudice. You should not rely on the legal references made by the appellant in his or her opening brief. You may need to do some reading on the subject. Go to the county public law library (see Appendix 2) and research the case law and statutes that relate to the issues on appeal. Reread the court's statement of decision, if there is one, or the orders and judgment set out in the minutes of the court. Be sure to respond to each and every issue raised in appellant's opening brief. Deal with each issue separately, with headings and subheadings that match the ones used by the appellant. Check the record and make sure that an objection or motion was made to challenge the ruling in the trial court at the time the ruling was made. If no objection or motion was made, the error may have been waived, or given up. Tell the court in your brief if you believe there was a waiver. If the Court of Appeal believes the appellant has waived the issue, it may decide to not even consider the issue the appellant has raised.

There may be additional issues—for example, concerning the statute of limitations or other defenses—that may result in a decision in your favor. You should discuss these issues in your respondent's brief even though the appellant did not bring them up.

Appellant's Reply Brief

When is the appellant's reply brief due? The reply brief is due 20 days after the respondent's brief is filed. (CRC rule 15(a).) There is no five-day extension if respondent's brief was served by mail. (Code of Civil Procedure, section 1013(a).)

Why an appellant's reply brief? Why no response to the reply? Because the appellant has the burden of showing the Court of Appeal that the trial court erred, the appellant is given the opportunity to respond to the respondent's brief. The appellant's reply brief is optional. No new issues may be raised in the reply, since

the respondent would have no opportunity to rebut them. The appellant should: show how the respondent has not countered the appellant's claims stated in the opening brief; address the cases and the arguments raised in the respondent's brief; and respond to new issues raised by the respondent in its brief. There is no response to the reply brief. Briefing has to stop somewhere, and this is where it stops!

Considerations that Apply to All Briefs

Table of contents and table of authority. When you have finished your brief, copy each heading and subheading into a table of contents (the table of contents will be page **i** of your brief). The person reading your brief should be able to get a good overview of the case by skimming the table of contents. Then go through the brief and write down all of the cases you used, then all the statutes, then all the rules of court, then all the other books and articles. List the cases alphabetically, the statutes alphabetically by code and numerically by section number within each code, and the books and articles alphabetically by author. Type these lists—cases, statutes, and “other authorities”—and note on which page each item is found. This is the table of authorities which will be page **ii** of the brief. (CRC 14(a).) Page 1 will be the first page of the *text* of your brief.

What about format? Briefs should be:

- Typed;
- On 8-1/2-by-11 inch recycled paper;
- One-and-a-half or double spaced, with single-spaced headings and footnotes; both sides of paper may be used unless prepared with a typewriter;
- Bound on the left side, with staples (if used) covered by tape (most briefs, however, are Velobound);
- Printed with a type size of at least 13 points; and
- Given side margins of 1-1/2 inches, and upper and lower margins of 1 inch.

The cover colors are standardized as follows:

- Appellant's opening brief—green
- Respondent's brief—yellow
- Appellant's reply brief—tan
- Appendix—cream
- Petition for rehearing*—orange
- Petition for review*—white

The pages should be bound in pamphlet or book style. On the cover should be the title of the case, the superior court and Court of Appeal case numbers, the names of the superior court judge and county, the type of brief (for example, “Appellant's Opening Brief,” “Respondent's Brief,” or “Appellant's Reply Brief” (see “Cover” in Sample K)), and your name, address, and daytime telephone number. (CRC rule 14 (b).) The court heading should be centered at the top of the brief cover.

What about service? All civil briefs should be served on all the parties, the clerk of the superior court (for delivery to the judge in the case), and the California

Supreme Court (five copies) and filed in the appellate court (the original and four copies). (CRC rule 15(a), (c).) For court addresses, see Appendix 2.

What if I need more time to file my brief? If you need more time to file the appellant's opening brief, the respondent's brief and/or the appellant's reply brief, you and opposing counsel can stipulate (agree in writing) to up to a maximum of 60 days in extensions for each brief. Stipulations must be filed in the Court of Appeal before the date the brief is due. If you need more time and have already stipulated to 60 days *or* if you are unable to get opposing counsel to agree to a stipulated extension, you must file a motion or application for extension of time with the Court of Appeal. (CRC, rule 15(b).) (See "Request for Extension of Time" in Chapter 6.)

What if the brief is late? If the appellant's opening brief or a respondent's brief is late, a notice (under CRC rule 17) will be sent that gives the party 15 more days to file the brief. If the appellant's opening brief is not filed within the 15-day period allowed under the rule, the appeal will be dismissed. If the respondent's brief is not filed within the 15-day period, the court will decide the case on the appellant's opening brief, the record, and any oral argument by the appellant. (CRC rule 17.) Within the rule 17 period, a party may apply for an extension of that time for good cause. If a brief is not filed during the extension, the court may dismiss the appeal. (CRC rule 17(d).)

How are exhibits sent to the Court of Appeal? In some superior courts, exhibits are **lodged** with the court. Since they were lodged, the superior court returns the exhibits to the parties at the end of the case.

A party wishing to have the Court of Appeal consider an original exhibit must file a notice (which designates the exhibits to be sent) in superior court within 10 days after the respondent's brief is filed. (CRC rule 18(a)(1)) A copy of the notice must be sent to the Court of Appeal. Ten days after the notice is filed in the superior court, any other party wishing to have the Court of Appeal consider additional exhibits may also file a notice in the Superior court. (CRC rule 18(a)(2)) Under CRC, rule 18(b), the Superior court and the party requesting that exhibits be lodged with the Court of Appeal must each put the designated exhibits in their possession into numerical or alphabetical order. The exhibits are sent to the Court of Appeal along with two copies of the list of exhibits being sent. Since exhibits are lodged with the Court of Appeal, they will be returned at the end of the case.

What if the briefs are not prepared properly or not filed at all? If the brief is not done properly, the court may, at the request of the opposing party or on its own motion, strike the brief and return it to the party for corrections and changes. In making these corrections, generally it is necessary to prepare a new document, which must be served on all the parties and filed with the court. If the incorrect or omitted items have been redone properly, the court files the corrected document. If the items have not been redone properly, the court may dismiss the case if it is an appellant's opening brief, or let the appeal proceed on the record and the appellant's opening brief if it is the respondent's brief.

Chapter 6

Other Things You Should Know

Abandonment, Settlement, and Dismissal

At some point in the process we just described, the appellant may decide to abandon the appeal. If this happens before the record has been filed, the appellant should file a written abandonment or stipulation for abandonment at the **appeals section** of the superior court, and the appeal will be dismissed. (CRC rule 20(a).) If the clerk's transcript has not been completed, the portion of the deposit that has not been used should be refunded. (CRC rule 5(d).) If it is after the record has been filed, the appellant should file a written abandonment or stipulation to dismiss in the Court of Appeal. At this stage, the court has the discretion to accept or deny the request. (CRC rule 20(c).)

If the parties are able to agree on a settlement of their differences, the appellant should immediately notify the court in writing that the matter has settled and request a dismissal of the appeal.

If at any time the *respondent* believes the appeal should be dismissed, the respondent should file a motion to dismiss. If the *Notice of Appeal* is late, or "untimely," the court has no power to hear the appeal, and the case will be dismissed. If the ruling is not appealable, the court may dismiss or it may elect to hear the case as a writ. The court will exercise its discretion in considering other dismissal motions, and may deny such motions if the issues raised in the appeal are in the public interest.

Motions

When do you file a motion? If there are problems with the record, a need for more time to complete a task, a desire for preference or priority in getting the court to handle the case or any problem other than the failure to file a timely *Notice of Appeal*, you can file a motion or application asking the court to take care of the problem. (See, CRC rules 19, 41, 43.)⁴

What kinds of motions are there? Any kind of request of the Court of Appeal (for example, for an extension of time) is made by motion or application. The most commonly used motion, known as a motion to augment, is to add missing or overlooked items to the record. (See, "Record Problems" following Option 6c, Chapter 3, pages 17 & 18, about items missing from the record.) A motion can also

⁴ CRC rule 41 covers "motions in the reviewing court," and rule 43 deals with "applications on routine matters." According to rule 43, routine matters cover extensions of time and "other matters of routine." This court does not differentiate among motions, applications, and requests.

be used to vacate a dismissal that has been entered against you, to consolidate two cases, and so forth.

How is a motion prepared? The motion should be typewritten, with *Proof of Service* on all counsel and self-represented parties, and an original and three copies filed with the Court of Appeal. (CRC rules 41(a), 44(b).) You need to tell the Court of Appeal why you are making the request (show “good cause”), provide additional information that might be relevant, and let the Court of Appeal know what it is you want it to do (such as grant preference in the Court of Appeal in the processing of your case based on a terminal illness, add to the record, take judicial notice, etc.). Along with the motion should be points and authorities to support the request and documentary evidence (declarations and exhibits) if it is needed to support your request. Points and authorities are just that: the points set out the argument you wish to make, and the authorities give the legal reasons that the motion should be granted or denied (see Sample L). At least one declaration should, under penalty of perjury, identify the facts surrounding the request, what you have done or attempted to do to take care of the problem, what you want the court to do, and why it is necessary (see Sample M). Where motions are defective, the court may deny the motion “without prejudice,” which means the applicant may correct whatever problems there are and refile the motion.

Any opposition to the motion should be filed within 10 days (15 days if the motion was served by mail) from the date of service. Most motions are not ruled on until the time to file the opposition has passed. Generally there is no hearing on a motion.

What is a motion to augment? A motion to augment the record is used when items are missing from the record on appeal (the clerk’s or reporter’s transcript). (See Samples N and O).

If the superior court clerk or reporter failed to include something that was designated in your designation of record, you do not need to file a motion to augment. Instead, serve and file a notice to correct the record in the superior court, asking that the missing items be copied and sent to be added to the record. (CRC rule 12(b).) At the same time, you need to serve on the Court of Appeal and all parties copies of the notice to correct the record. The clerk or reporter must comply within 10 days. If the clerk or reporter does not, you then need to file a motion to augment. However, if you already have a copy of the document that the superior court clerk omitted, it may be faster and cheaper to file a motion to augment to which you just attach the document instead of filing a notice to correct the record.

If new material is to be added to the record because the appellant or respondent forgot to designate it or did not know at the time that it would be needed, a motion to augment must be filed with the Court of Appeal. Each item requested must be a part of the record that was before the superior court such as a document that was filed in the superior court, received in evidence, or lodged with the court or a transcript of oral proceedings. An item that was “lodged” with the court (rather than being filed) was returned to the parties and thus is not physically in the superior

court file or in the custody of the court. Any document or transcript that is available should be attached to the motion. The court, if it grants the motion, then augments its record with the documents or transcripts included with the motion. Sample N is a *Motion to Augment Record on Appeal* with documents attached.

If copies are not available, the items must be identified as they are in a designation of the record so that the superior court can prepare the needed clerk's and/or reporter's transcripts. These added transcripts are called **"supplemental clerk's and/or reporter's transcripts"** if the motion is granted. (CRC rule 12.) Sample O shows a *Motion to Augment* where the documents must be copied by the superior court to prepare a supplemental clerk's transcript. Sample P is a *Motion to Augment Record on Appeal* with reporter's transcript.

If you need to have a supplemental clerk's and/or reporter's transcript prepared, it will take some time. The superior court will prepare an estimate of the cost of preparing the supplements. After the estimate is paid, the superior court is usually given 30 days to actually prepare the materials. If your brief is due within this time, your motion to augment should include a request to extend the deadline for filing the brief to 30 days after the supplemental transcript is filed. The title of your document should be "Motion to Augment the Record and Application to Extend Time to File [Appellant's Opening, or Respondent's or Appellant's Reply] Brief."

What is a request for extension of time?⁵ The parties may stipulate (agree) to extend the briefing time up to 60 days for each type of brief by filing one or more stipulations in the Court of Appeal before the brief is due. The stipulation must be signed by and served on all parties. Only one signature on the copy filed with the Court of Appeal needs to be an original.

If a party needs more than the 60 days already stipulated to, or if the opposing party refuses to stipulate to an extension, the party needing the extension must file a motion for extension of time (see Sample Q). The party seeking additional time must give reasons, also known as **"good cause,"** why that extension is needed. In addition, the applicant for an extension of time should explain either that (1) the applicant was unable to get the agreement of the other party to a stipulated extension or (2) the parties have already stipulated to the maximum 60 days and the applicant now is seeking permission of the court for a further extension. (CRC Rule 15(b).)

An *Application for Extension of Time to File Brief* (Sample Q) should include the current deadline for the brief or item, the length of the requested extension, any previous applications that have been granted or denied, and any notices that have been issued under CRC rule 17, in addition to a statement of good cause (the reason). (CRC rules 43, 45.5.) You need to file with the court an original, *Proof of Service* of the request on all parties, and self-addressed, postage prepaid envelopes

⁵ CRC rule 43 covers "applications on routine matters" including extensions of time and "other matters of routine." This court makes no distinctions among motions, applications, and requests. Rule 15(b) specifically covers extensions of time for briefs.

for mailing the order that grants or denies the application to all counsel and self-represented parties. In a civil case, a represented client must be served by his or her attorney with any request for extension of time, with a copy accompanying his or her application to the Court of Appeal. Evidence of this need not include the client's address. (CRC rule 43, 45(f).)

Most often, applications for extension of time are ruled on without waiting for opposition. Thus, if you wish to oppose an application for extension of time, you must file the opposition (or call the clerk's office and let them know you will be filing an opposition) right away.

Chapter 7

Post-Briefing

Step 9. Asking for oral argument

The court hears oral argument after all the briefs have been filed. Argument is generally held in the second full week of the month, before a panel of three justices. The court writes the parties asking who wishes to argue the case orally. In the Fifth Appellate District, 30 minutes for each side is the maximum time for argument. If argument is requested, the court will notify you of the date and time at least 20 days in advance. (CRC rule 23(b).)

The fact that you orally argue a case does not affect the length of time it will be before you get your decision. Cases, whether argued or not, are randomly “put on calendar” (assigned to a justice to work on) in order of the dates on which their briefings were completed.

What do you say at oral argument? By the time of oral argument, the three justices on the panel who hear your case are familiar with the facts of your case and the law involved. Thus, if you wish to argue the case, you do not need to repeat anything that you have already told the court in your briefs. If you do not have anything to present other than what is in your briefs, you should seriously consider not presenting any oral argument.

How soon is there a decision? After all the briefs have been filed and oral argument, is either held or waived, the cause is “submitted.” After the case is submitted, the court does not accept any further information about the case. (CRC rule 23(d).) The justices on the panel discuss the case, and decide what they think is the correct disposition. A decision is then filed within 90 days from the date it was submitted.

Step 10. Petitioning for rehearing

After the opinion in the appeal is filed, you may file a *Petition for Rehearing* (Sample R) in the Court of Appeal. There is an automatic right to rehearing if the Court of Appeal makes a decision based on an issue that was not proposed or briefed by any party. (Government Code section 68081.) One does not need to petition for rehearing before seeking review in the Supreme Court. However, as a policy, the Supreme Court accepts the statement of facts and issues as set out in the Court of Appeal opinion unless any alleged omission or misstatement of fact was brought to the Court of Appeal’s attention by petition for rehearing. (CRC rule 28(c).)

How soon does the *Petition for Rehearing* need to be filed? The *Petition for Rehearing* must be served and filed within 15 days of the filing of the opinion, the order for publication, or the modification of the opinion if it changes the judgment.

Opposition to the petition, must NOT be filed unless the court requests an answer. (CRC rule 25(b).) If any is requested, it must be served and filed within 8 days of the filing of the petition. If no ruling, or order for publication or modification that changes the judgment, has been made within 30 days of the decision, the petition will be deemed denied. (CRC rule 25(c).)

What goes into the petition? The petition should not merely repeat information and argument that was covered by the appeal. Instead, it should focus on specific errors or contradictions in the opinion.

Normally the court does not consider points or issues being raised for the first time on rehearing, with two exceptions: when the superior court or the Court of Appeal did not have the power (jurisdiction) to handle the case, and when the Court of Appeal, in an exercise of its discretion, agrees to consider new materials (such as a new case) that were not included earlier.

Generally, the petition for rehearing should be directed at errors in the opinion: a major misstatement of fact, an error of law, major law or facts that were left out, and/or an important argument that was not included.

The original and four copies should be filed with the Court of Appeal along with *Proof of Service* on all parties; one copy should go to the superior court, and five copies to the Supreme Court. (CRC rule 44(b).)

The Court of Appeal has jurisdiction (power to make rulings in the case) for 30 days from the date the opinion was filed *or* a request for publication was granted *or* an opinion was modified that changed the judgment. (CRC rule 24(b), 25(b).)

Step 11. Review in the California Supreme Court

The Court of Appeal's decision becomes final in the Court of Appeal 30 days after the filing of its opinion or the grant of publication or modification of the opinion with a change in judgment. A petition for review in the California Supreme Court must be filed within 10 calendar days, which start the day after the 30th day whether the court is open or not. Thus, if the Court of Appeal's decision becomes final on a Friday, Saturday and Sunday are days 1 and 2 of this 10-day period during which the petition for review must be filed. (CRC rules 24(b), 28(e).)

At the beginning of the petition there should be a short statement of the issues to be presented, with a statement why this case is one the Supreme Court should take for review. (CRC rule 28.1(b).) The petition may not exceed 8,400 words or 30 pages. The 30-page maximum does not include exhibits and the copy of the Court of Appeal opinion that must be included. (CRC rule 28.1(b)(e).) An original and 13 copies must be filed in the Supreme Court. (CRC rule 44(b).) A copy must be served on the clerk of the Court of Appeal making the decision, on each party, and on the clerk of the superior court. An answer is not required unless the party opposing review wants to add an issue. If filed, an answer should be filed within 20 days after the petition is filed. (CRC rule 28(e)(4).)

If the Supreme Court grants review, it may put off action while awaiting disposition of another case, or specify issues that are to be briefed. (CRC rules 28.2(d), 29(a).) Within 30 days the petitioner must file an opening brief or the brief filed in the Court of Appeal. The opposing party then has 30 days to file an answer or a copy of the brief filed in the Court of Appeal. A reply brief, if filed, is due within 20 days. The Court of Appeal accepts Supreme Court *filings* and forwards them to the Supreme Court. The Court of Appeal Fifth Appellate District is a depository for the Supreme Court. When you file your brief in the Court of Appeal, it is the same as if you filed it in the Supreme Court. For further information concerning the Supreme Court, call 415-865-7000 (San Francisco) or 213-830-7570 (Los Angeles).

Step 12. Issuance of the remittitur

This is the end of the case. The remittitur is a document that says the review of the case is final and transfers the power of the reviewing courts (Court of Appeal and Supreme Court) back to the superior court so the superior court can follow up on what, if anything, still needs to be done to carry out the decision or decisions made by the reviewing courts. (CRC rule 26.)

If no petition for review was filed in the Supreme Court, the remittitur is issued 61 days after the filing of the opinion in the Court of Appeal (unless a request for publication was granted or a there was a modification of the opinion resulting in a change in the judgment, in which cases the time is more than 61 days). At that time the case becomes “final” in the reviewing courts. (CRC rule 24.) If a party is entitled to costs, the memorandum of costs must be filed in superior court within 40 days of the mailing of a copy of the remittitur. (CRC rule 27(d).)

Glossary

(Definitions of Terms)

appeal. A review by the Court of Appeal of what happened in the superior court to determine whether any mistakes of law occurred and, if so, whether the party who filed the appeal is entitled to have the judgment or order of the court below reversed, vacated, remanded, or otherwise changed. If the ruling was by a judge having power to rule on cases involving \$25,000 or less, the appeal is to the appellate division of the superior court; if the ruling was made in the general jurisdiction of the superior court having power to rule on matters involving more than \$25,000, the appeal is to the Court of Appeal. If something is “on appeal,” it means a *Notice of Appeal* has been filed and the case is in the appeal process at the Court of Appeal.

appellant. The person filing the *Notice of Appeal*; the person who did not win at the trial or hearing in the superior court (or other agency having power to make rulings).

appellant’s opening brief (abbreviated AOB). The brief filed by the appellant that sets out his or her story, the error that occurred and why that error is so important that the rulings of the trial court should be reversed (Sample K).

appellant’s reply brief (abbreviated ARB). The brief filed in response to the respondent’s brief. It is limited to issues already raised in the appellant’s opening brief (AOB) or added in the respondent’s brief.

appellate court. In California there are two levels of appellate court. The Court of Appeal is the intermediate appellate court—intermediate between the superior court (trial court) and the Supreme Court. Appeals from the unlimited jurisdiction of the superior court with power to rule in cases involving more than \$25,000 are generally taken to the intermediate appellate court, which must review each and every appeal filed with it. Review of intermediate appellate court decisions is by petition for review in the Supreme Court, the highest state court in California. The Supreme Court selects which cases it will hear—less than 5 percent of petitions filed. (*See*, appeal.)

appendix. A document called an “appellant’s appendix” that is prepared by the appellant in place of the clerk’s transcript, which is prepared by the Superior court. It includes the items that would have been designated had a clerk’s transcript been prepared. If respondent and appellant agree to put an appendix together it is called a “joint appendix”. Otherwise the respondent may prepare a “respondent’s appendix” if there are additional documents that the respondent thinks should be included but which are not in the appellant’s appendix.

brief. A written report of the facts of the case, the points and authorities concerning the law, and the argument of the party. It presents the issues you want to address and provides argument about why the superior court's order or judgment should be changed or should be upheld. If your brief does not comply with the rules, it may be returned to you for correction.

California Rules of Court (abbreviated CRC). Rules put out by the Judicial Council for statewide use. They present the procedural requirements and time limits on handling cases in court. (These rules supplement the Code of Civil Procedure.)

cause of action. A group of facts giving rise to a basis to sue; a legal theory of a lawsuit, such as a malpractice cause of action.

citation (often shortened to "cite"). A reference to legal authority (such as a case, statute, or treatise) or a reference to the record (such as the clerk's or reporter's transcript). (For more on citation, see Appendix 3.)

Civil Case Information Statement (also known as Docketing Statement).

A questionnaire that assists the court in determining whether a *Notice of Appeal* is timely and is from an appealable judgment or order (Sample J). The form is filled out by each appellant or cross-appellant and filed with the Court of Appeal within 10 days after the clerk mails you a notice that the form must be filed.

clerk's transcript (abbreviated CT). Includes papers that are designated by the parties and that were filed or lodged with the clerk at the trial, all minutes, all transcripts of hearings, all written instructions to the jury (given or refused), and all exhibits (admitted or refused). (CRC rule 5.)

codes. A systematic collection of laws (statutes) dealing with a particular subject passed by the Legislature, for example the Code of Civil Procedure, Penal Code, etc.

counsel. An attorney or attorneys representing an individual or business entity in a lawsuit or giving them legal advice.

cross-appeal. Sometimes, when each party in a case wins on some issues but loses on others, both sides may wish to appeal. The party who initiated the action in the trial court (the plaintiff, petitioner, or cross-complainant) is listed first (i.e., above the “v.”), regardless of which party appeals first. In an appeal by both the plaintiff and defendant, both are called appellant and neither party is called respondent; it is implicit that both are respondents to each other’s appeal. The time for any other party to file an appeal is 20 days after the superior court clerk mails notification of the first appeal. (CRC rule 3(e)(1).)

declaration. A written statement of facts known to the declarant and sworn to under oath or penalty of perjury.

default. When a party misses a deadline to pay a fee or file papers.

defendant. The person(s) the suit is being brought against in the Superior court.

demurrer. A motion brought by the defendant saying that even if everything in the complaint is considered to be true, it is not sufficient to state a cause of action—that is that anything legally wrong has occurred.

discovery. The process of finding out facts and developing evidence before trial in order to prove one’s case. The primary types of discovery are interrogatories, depositions, requests for admission, and requests for production.

discretion. The freedom to make decisions as one sees fit.

exhibit. A document or object formally presented to the court as evidence.

file-stamped. A document which carries the court’s stamp with the date in the upper right-hand corner making the document an official court document.

findings of fact. When there is disagreement about what the facts of a case are, the judge or jury determines what the fact is by making a finding of fact. The finding of fact, for example, that the light was red, not green as the plaintiff alleges, must be supported by evidence in the record.

frivolous appeal. An appeal that is undertaken to harass the respondent or for delay *or* an appeal that is totally without merit.

good cause. The reason the applicant should be permitted to do what he is asking to do.

judgment. The final ruling of the court. Usually this is the end of the case. Sometimes if there are many defendants, some of the defendants may get out of the case early, and when the court rules that they are dismissed, a judgment may be entered making more than one judgment in the case.

judicial notice. Items the court accepts without proof, including well-known and indisputable facts, rules of court, rules of professional conduct, decisional and public statutory law of California, and the definitions of English words and legal expressions.

jurisdiction. The authority or the power of the court to act. Generally there are certain things that must be done in order for the court to have jurisdiction. If a court does not have jurisdiction over your case, the case will be dismissed.

motion. The procedure by which one asks the Court of Appeal to do something or to permit one of the parties to do something. In the appellate court, motions are most commonly used to augment (add to) the record, and take judicial notice. The opposing parties may file an opposition to the motion, which is usually ruled on by a single judge. The motion is held for opposition 10 days from the date of service if personally served, or 15 days if served by mail.

Notice of Appeal (abbreviated NOA) A notice that must be filed in a timely manner to begin the process of appeal (Sample A).

opinion. The written decision of the court, including the reasons for that decision and the facts on which it is based.

order. A ruling after a motion or an application.

party. One who brings a lawsuit or has a lawsuit brought against him. One who takes part in a legal transaction.

plaintiff. The party bringing the lawsuit in the trial court.

points and authorities. A document that sets out each legal proposition, issue, or argument (the point) the party wishes to make, supported by citations to cases, statutes, or other sources (the authorities). Points and authorities (or “Ps & As”) accompany motions, giving legal reasons why the motion should be granted or denied.

Proof of Service (abbreviated POS). When papers are served (see definition of “service” below), the *Proof of Service* (Sample C) is attached to the papers and tells what papers were served, to whom they were sent or delivered, the date of service, and who served the papers. If service is in person, the *Proof of Service* also states who actually got the papers and when. Whenever a paper is to be served on a party, the service should be made on the person’s attorney if he or she has one.

pro per, pro se, in propria persona. Self-represented.

remittitur. A document, issued by the Court of Appeal to the superior court that returns jurisdiction to the superior court and shows the final judgment of the Court of Appeal, either reversing or affirming the superior court.

reply brief. A brief filed by the appellant in response to the respondent’s brief; it is limited to issues already raised in the briefs.

reporter’s transcript (abbreviated RT). Everything that is said in the courtroom while court is in session, which the court reporter takes down and types.

respondent. The person responding to the opening brief; the person who won in the trial court.

respondent’s brief (abbreviated RB). A brief filed by the party who won “below” (in the superior court) that responds to the issues raised in the appellant’s brief with arguments why the rulings the trial court made were correct or, if they were in error, why the error was harmless.

serve and file. A paper filed in a court is to be accompanied by proof of prior service of a copy of the paper on the attorney of each who is represented by a separate attorney or on the individual person if he or she is self-represented. Whenever the paper is required to be given or served on a party, the service should be made on the party’s attorney if he or she has one.

service. The process of letting the other side know what papers are being filed, when hearings are to be held or what rulings have been made. It may be done in person, in which case the notice must be handed to the person himself or to a person designated to receive service, or it may be done by mail. Service must be done by someone over the age of 18 who is not a party to the case. The Proof of Service is attached to the back of the notice or document and tells who got the notice, what date it was served and who served it. If service is in person, it will also give the name of the person taking the documents and the time of service. The court does not serve papers for you. **Everything filed with the Court of Appeal must be accompanied by a Proof of Service.**

standard of review. The rules or guidelines used by the Court of Appeal to determine whether the Superior court erred in making a particular ruling.

statutes. Laws enacted by the state Legislature or by Congress.

stipulation. An agreement or to make an agreement among all parties.

submit. When all of the briefing is completed and oral argument, if requested, has been heard the case is submitted to the court which means it is ready for decision. The next thing that will happen is the issuance of an opinion. After the case is submitted the court will not accept any further information or argument on the case.

superior court. The trial court. The court of limited jurisdiction handles civil cases seeking \$25,000 or less; the court of general jurisdiction handles all other civil cases. The appellate division of the superior court handles appeals from decisions made in the court of limited jurisdiction.

summary judgment. When there is no issue of material fact the applicant may bring a motion for summary judgment on the basis he or she can prevail as a matter of law without the need for a trial.

table of authorities. A listing of all of the legal cases, statutes and secondary authority used in the brief with the page on which each was used.

treatise. A formal and systematic writing setting out the principles of a given subject, such as a treatise on contracts.

Timeline

To assist in computing the proper time and in meeting appellate court deadlines:

Filed in Superior court

Judgment or Appealable Order

Notice of Appeal, filing fee (\$655 payable to the Court of Appeal) and clerk's deposit (\$100 payable to the trial court) due when counting from date the judgment/order file stamped or notice of entry served:

If notice of entry served: 60 calendar days after service or mailing

If no notice of entry served: 180 calendar days after judgment entered

May be extended 30 days by denial of a timely motion to vacate, motion for new trial, motion for judgment notwithstanding the verdict, or motion for reconsideration

After the filing of the Notice of Appeal:

Designation of reporter's transcript & deposit money: 10 calendar days

Designation of clerk's transcript OR election to proceed under Rule 5.1:
10 calendar days

Respondent's designation of additional items: 10 days after appellant's designation

Motion to contest Rule 5.1 election: 10 calendar days after election filed

Filed in the Court of Appeal

Civil Case Information Statement (formerly Docketing Statement): 10 calendar days after the clerk mails you a notice that the form must be filed.

After getting notice that record is filed with the Court of Appeal:

Appellant's Opening Brief: 30 calendar days OR 70 days after the filing of a rule 5.1 election, if the appeal proceeds without a reporter's transcript.

Respondent's Brief: 30 calendar days after Appellant's Opening Brief is filed.

Appellant's Reply Brief: 20 calendar days after Respondent's Brief is filed.

Petition for Rehearing: 15 calendar days after the filing of the opinion, the order of publication or the modification of opinion if it changes the judgment.

Answer to Petition for Rehearing: 8 calendar days after the filing of the Petition for Rehearing.

APPENDIX I**BIBLIOGRAPHY**

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4-5 Cal Jur 3d, (1998) Appellate Practice

California Rules of Court, Rules 1-80, primarily 1-29.9; 39-39.4; and 40-57.

California Style Manual, Fourth Edition.

Code of Civil Procedure, section 904 et seq.

Eisenberg et al, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2001)

Matthew Bender, CA Forms of Pleading and Practice, Vol. Appeals

9 Witkin, Cal. Procedure (4th ed. 1996) Appeal

APPENDIX 2
COURTS & PUBLIC LAW LIBRARIES
COURTS

For filing all notices of appeal and requests for preparing the record accompanied by proofs of service use the County Superior Courts as listed:

Clerk, Appeals Section
Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93721
(559) 488-1691

Kern County Superior Court
Clerk of the Court
1415 Truxtun Avenue
Bakersfield, CA 93301
(661) 868-5412

Superior Court Executive Officer
Clerk of the Court of Kings County
1426 South Drive
Hanford, CA 93230
(559) 582-3211 Ext. 2444

Madera County Superior Court
Clerk of the Court
209 W. Yosemite
Madera, CA 93637
(559) 675-7995

Superior Court Administrative Officer
Clerk of the Court of Mariposa County
5088 Bullion Street
Mariposa, CA 95338
(209) 966-2005

Merced County Superior Court
Clerk of the Court
627 W. 21st Street
Merced, CA 95340
(209) 385-7532

APPENDIX 2 (continued)

Stanislaus County Superior Court
Clerk of the Court
800 11th Street
Modesto, CA 95353
(209) 525-6417

Tulare County Superior Court
Appeals Division
County Civic Center
Visalia, CA 93291
(559) 733-6747

Superior Court
County of Tuolumne
41 W. Yaney
Sonora, CA 95370
(209) 533-5555

California Court of Appeal

For filing motions and briefs in the Court of Appeal, the address is:

Clerk, Court of Appeal
Fifth Appellate District
2525 Capitol Street
Fresno, CA 93721
(559) 445-5491

California Supreme Court

For filing copies of briefs and petitions for review in the California Supreme Court the address is:

California Supreme Court
350 McAllister Street Second Floor
San Francisco, CA 94102
(415) 865-7000

OR

California Supreme Court
300 South Spring Street
Los Angeles, CA 90013
(213) 830-7570

APPENDIX 2 (continued)**PUBLIC LAW LIBRARIES**

In the event you desire to represent yourself in an appeal, the following web site can provide information concerning law libraries: www.cccll.org.

The Public Law Libraries for the counties within the jurisdiction of the Court of Appeal Fifth appellate district are at the following locations:

Fresno – Courthouse – 1100 Van Ness Avenue, Fresno – (559) 237-2227

Kern – 1415 Truxtun Avenue, Rm. 301, Bakersfield – (661) 868-5320

Kings – Government Center – 1400 W. Lacy Blvd., Bldg. 4 – (559) 582-3211 Ext. 4430

Madera – 209 W. Yosemite Avenue, Madera – (559) 673-0378

Mariposa – Courthouse – 5088 Bullion Street, Mariposa – (209) 966-2005

(Call in advance for availability)

Merced – County Courts Building – 670 W. 22nd Street, Merced – (209) 385-7332

Stanislaus – 1101 13th Street, Modesto – (209-558-7759)

Tulare – County Courthouse, Room 1 – 221 S. Mooney Blvd., Visalia – (559) 733-6395

Tuolumne – 68 N. Washington Street, Sonora – (209) 536-0308

APPENDIX 3

(Citing Your Sources of Information)

Arguments over citation abound. Don't fret. We are mainly interested in finding where you got the information you have included in the brief. As noted in the text, you can take a very bare bones approach and put the name of the book that is on the spine and the page number (for example "Official California Appellate Reports, 4th series #43, 1996, p. 303 for a case or for a secondary source). A secondary source is a book that is written about the laws and the cases such as Witkin, Continuing Education books, and law reviews. Most of the titles in Appendix 1 are secondary sources. Primary sources include, for example, cases, codes, constitutions, and administrative regulations. For a statute give the name of the code (for example, Code of Civil Procedure) and the section number (for example, section 1013). The total citation would look like this: Code of Civil Procedure, section 1013.

If you want to be more proper about the form of your citation, look in some of the books in Appendix 1 or look at a copy of the California Style Manual (4th ed.). As you will see, a full, proper citation, rather than a "bare bones" one, includes the name of the case. For example, the bare bones citation in the first paragraph in proper form would be: Marsh v. Mountain Zephyr, Inc. (1996) 43 Cal.App.4th 289, 303. The information is the name of the case; the year it was filed; the volume of the set (43), name (Cal.App. which stands for California Appellate Court opinion); set (4th); number of page in the volume with the first page of the opinion (289); and page where the information that you have used is found (303). If the name of the set is "California Appellate Reports" the cases were written by the Court of Appeal; if the name is "California Reports", the cases were written by the California Supreme Court.

The citation to secondary sources varies with the source. Basically one uses the title of the book, the edition, the year it was published and the page on which the information you used can be found. If the book has a single author, put the last name of the author before the title.

For Code Sections you need only cite the name of the code and the number of the section as shown in paragraph 1.

SAMPLE A

NOTICE OF APPEAL

Sample A
NOTICE OF APPEAL - INSTRUCTIONS

In order to appeal you must be "aggrieved". To be "aggrieved" the lower court or administrative agency must have entered a judgment or order that affects your legal rights or costs you money. Usually you must have been a party in the case in the lower court. You may not appeal on behalf of a spouse, child or other relative, or a friend (unless you are a legally appointed guardian). The notice of appeal is filed in the superior court and should be accompanied by a check, money order or cash of \$655.00 which is the filing fee. Checks or money orders should be made payable to "Clerk, Court of Appeal". A second check or money order for \$100.00 made payable to "Clerk of the Superior Court" is a deposit for the clerk's transcript. This second check need not be included if you, as appellant, plan to prepare an appendix under rule 5.1. If you do not have the money for the filing fee, an application for waiver of court fees and costs must accompany the notice of appeal. (See Sample D, for Application for Waiver of Court Fees and Costs.)

Filling out the Notice of Appeal form:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your superior court caption.
- (6) The defendant's name as it appears on your superior court caption.
- (7) The superior court number from your superior court case.
- (8) Your name.
- (9) Describe the judgment or order you are appealing.
- (10) The date of the superior court file stamp on the judgment or order you are appealing.
- (11) Current date.
- (12) Your signature.
- (13) Type or legibly print your name.

File: Original plus fees in Superior Court

Bring an extra copy to be file-stamped for your file.

Serve: All counsel

All self-represented parties

(1)
(2)
(3)
(4)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF _____

(5)

Plaintiff,

v.

(6)

Defendant.

Superior Court No. (7) _____.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that (8) _____, appeals from (9)
entered on (10) _____.

DATED: (11) _____

(12)

Signature

(13)

Type or Print Name

SAMPLE B

NOTICE OF ENTRY OF JUDGMENT

Sample B**NOTICE OF ENTRY OF JUDGMENT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF _____

GOLDILOCKS,

Plaintiff,

v.

THE THREE BEARS,

Defendant.

Superior Court No.

NOTICE OF ENTRY OF JUDGMENT

On December 14, 2002, judgment was entered on behalf of defendant GOLDILOCKS. Attached hereto as Exhibit A is a true and accurate copy of that judgment.

DATED:

By: _____

Note: Attach a copy of judgment or order
and Proof of Service

File: Original in Superior Court with
Proof of Service

Serve: All counsel
All self-represented parties

SAMPLE C**PROOF OF SERVICE**

Sample C

PROOF OF SERVICE - INSTRUCTIONS

Each document you prepare must be served on all counsel and self-represented parties in your case. The document may be served by mail or hand-delivery by someone who is over the age of 18 and not a party to the appeal. If the document is a brief, you must serve one copy on the Superior Court and five copies on the California Supreme Court as well as all counsel and self-represented parties.

How to serve a document:

Make a copy of your document for each party you wish to serve. You may use the attached Proof of Service form and type or print legibly the information in the shaded areas. The original Proof of Service must be attached to the document you are filing with the court and a copy of the Proof of Service must be attached to each copy of the document you serve on the parties.

Filling out the Proof of Service form:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal number which starts with "F0".
- (10) The Superior Court number from your Superior Court case.
- (11) The date on which the document was served.
- (12) If the document was served by mail, put the word "mailed" in the shaded box, or, if the document was personally handed to the person served, put the words "hand-delivered" in the shaded box.

(13) State the name of the document which you are filing with the Court of Appeal. If you are filing more than one document, list all documents you are filing at this time.

(14) State the full names and addresses of all the parties or their attorneys to whom the documents were mailed or hand-delivered.

(15) The current date.

(16) The signature of the person who actually served the documents.

(17) Type or print legibly the full name of the person, address and telephone number of the person who served the documents.

File: Original attached to every filing

Serve: Copy attached to every filing
served on:

Superior Court

Supreme Court

All counsel

All self-represented parties

(1)
(2)
(3)
(4)

COURT OF APPEAL, FIFTH APPELLATE DISTRICT

STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

F0 (9) _____
(Super. Ct. No. (10) _____)

PROOF OF SERVICE

I declare that on (11) _____, I (12) _____, one
copy of (13) _____,
on:

(14)

I declare that at the time of service I was at least 18 years of age and not a party to this case. I
declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

Dated: (15) _____ (16) _____

Signature

(17)

Type or Print Name

SAMPLE D

APPLICATION FOR WAIVER OF COURT FEES AND COSTS

Click on link below for printable form.

Form 982a17a = <http://www.courtinfo.ca.gov/forms/documents/982a17a.pdf>

Form 982a17 = <http://www.courtinfo.ca.gov/forms/documents/982a17.pdf>

Sample D

APPLICATION FOR WAIVER OF COURT FEES AND COSTS - INSTRUCTIONS

When you file your notice of appeal, there is a filing fee of \$655.00 which is due at the time of filing. A deposit of \$100.00 needs to be paid to the Superior Court if you want it to prepare a clerk's transcript for you. If you feel you cannot afford these fees, you may fill out an Application for Waiver of Court Fees and Costs. Generally, you would file the application in the Superior Court when you file your notice of appeal. If you did not file the application in Superior Court you may file it in the Court of Appeal.

Filling out the Application for Waiver of Court Fees and Costs form:

- (1) Your name, mailing address, city, state, zip code and telephone number where you can be reached during the day.
- (2) The name of the court in which you are filing the application. Addresses for the nine Superior Courts and the Court of Appeal are found in Appendix 2.
- (3) The plaintiff's name as it appears on your Superior Court caption.
- (4) The defendant's name as it appears on your Superior Court caption.
- (5) The Superior Court number from your Superior Court case. If you happen to have a Court of Appeal number, also put it here.
- (6) If you can't pay any of the court fees or costs, check box "a". If you can pay part of the court fees or costs, check box "b" and then write down what you can pay.
- (7) Your street address, city, state, zip code and telephone number where you can be reached during the day.
- (8) Write your occupation, employer and employer's address. If you do not have a job, write "unemployed". If you have a spouse and your spouse has a job, write your spouse's occupation, employer and employer's address. If your spouse does not have a job, write "unemployed".
- (9) If you are receiving financial assistance check box 4, then check the box or boxes next to the type of assistance you are receiving.
- (10) If you checked box 4 you have to fill out one of three boxes. Check only one box. If you check box "a" you must write your Medi-Cal number. If you check box "b" you must write your Social Security number and your birth date. If you check box "c" you need to attach verification documents which are listed on the Information Sheet on Waiver of Court Fees and Costs. After you have checked one of these boxes, you are done. Go to the bottom of the form and date and sign it, you do not need to fill out anything else.

(11) Check this box if your gross monthly income is less than the amount shown on the Information Sheet on Waiver of Court Fees and Costs. If you check this box, fill out items 8, 9a and 9g on the back of the form and date and sign the bottom.

(12) Check this box if your income is not enough to pay for the common necessities of life for yourself and your family and still pay court fees and costs. If you check this box, you have to complete the entire back side of the form, then date and sign the bottom.

(13) Current date.

(14) Type or print your name.

(15) Your signature.

INFORMATION SHEET ON WAIVER OF COURT FEES AND COSTS (California Rules of Court, rule 985)

If you have been sued or if you wish to sue someone, and if you cannot afford to pay court fees and costs, you may not have to pay them if:

1. You are receiving **financial assistance** under one or more of the following programs:

- SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
- CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families, formerly AFDC, Aid to Families with Dependent Children Program)
- The Food Stamp Program
- County Relief, General Relief (G.R.), or General Assistance (G.A.)

If you are claiming eligibility for a waiver of court fees and costs because you receive financial assistance under one or more of these programs, and you did not provide your Medi-Cal number or your social security number and birthdate, you must produce documentation confirming benefits from a public assistance agency or one of the following documents, unless you are a defendant in an unlawful detainer action:

PROGRAM	VERIFICATION
SSI/SSP	Medi-Cal Card <i>or</i> Notice of Planned Action <i>or</i> SSI Computer-Generated Printout <i>or</i> Bank Statement Showing SSI Deposit <i>or</i> "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	Medi-Cal Card <i>or</i> Notice of Action <i>or</i> Income and Eligibility Verification Form <i>or</i> Monthly Reporting Form <i>or</i> Electronic Benefit Transfer Card <i>or</i> "Passport to Services"
Food Stamp Program	Notice of Action <i>or</i> Food Stamp ID Card <i>or</i> "Passport to Services"
General Relief/General Assistance	Notice of Action <i>or</i> Copy of Check Stub <i>or</i> County Voucher

— OR —

2. Your total gross **monthly household income** is equal to or less than the following amounts:

NUMBER IN FAMILY	FAMILY INCOME
1	\$ 935.42
2	1,262.50
3	1,589.58
4	1,916.67
5	2,243.75

NUMBER IN FAMILY	FAMILY INCOME
6	\$ 2,570.83
7	2,897.92
8	3,225.00
Each additional	327.08

— OR —

3. Your income is not enough to pay for the common **necessaries** of life for yourself and the people you support and also pay court fees and costs.

To apply, fill out the Application for Waiver of Court Fees and Costs (Form 982(a)(17)) available from the clerk's office. If you claim no income, you may be required to file a declaration under penalty of perjury. Prison and jail inmates may be required to pay up to the full amount of the filing fee.

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal services office, or lawyer referral service in your county (listed in the Yellow Pages under "Attorneys").

If you are asking for review of the decision of an administrative body under Code of Civil Procedure section 1094.5 (administrative mandate), you may ask for a transcript of the administrative proceedings at the expense of the administrative body.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i>	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. <i>(Optional):</i>	
E-MAIL ADDRESS <i>(Optional):</i>	
ATTORNEY FOR <i>(Name):</i>	
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
APPLICATION FOR WAIVER OF COURT FEES AND COSTS	CASE NUMBER:

I request a court order so that I do not have to pay court fees and costs.

1. a. ☐ I am **not** able to pay any of the court fees and costs.
b. ☐ I am able to pay **only** the following court fees and costs (*specify*):
2. My current street or mailing address is (*if applicable, include city or town, apartment no., if any, and zip code*):
3. a. My occupation, employer, and employer's address are (*specify*):
b. My spouse's occupation, employer, and employer's address are (*specify*):
4. ☐ I am receiving financial assistance under one or more of the following programs:
a. ☐ **SSI and SSP:** Supplemental Security Income and State Supplemental Payments Programs
b. ☐ **CalWORKs:** California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families (formerly AFDC)
c. ☐ **Food Stamps:** The Food Stamp Program
d. ☐ **County Relief, General Relief (G.R.), or General Assistance (G.A.)**
5. If you checked box 4, you must check and complete **one of the three boxes below, unless you are a defendant in an unlawful detainer action. Do not check more than one box.**
a. ☐ (*Optional*) My Medi-Cal number is (*specify*):
b. ☐ (*Optional*) My social security number is (*specify*):
 - - and my date of birth is (*specify*):
[Federal law does not require that you give your social security number. However, if you don't give your social security number, you must check box c and attach documents to verify the benefits checked in item 4.]
c. ☐ I am attaching documents to verify receipt of the benefits checked in item 4, if requested by the court.
[See Form 982(a)(17)(A) Information Sheet on Waiver of Court Fees and Costs, available from the clerk's office, for a list of acceptable documents.]

[If you checked box 4 above, skip items 6 and 7, and sign at the bottom of this side.]

6. ☐ My total gross monthly household income is less than the amount shown on the *Information Sheet on Waiver of Court Fees and Costs* available from the clerk's office.

[If you checked box 6 above, skip item 7, complete items 8, 9a, 9d, 9f, and 9g on the back of this form, and sign at the bottom of this side.]

7. ☐ My income is not enough to pay for the common necessities of life for me and the people in my family whom I support and also pay court fees and costs. **[If you check this box, you must complete the back of this form.]**

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

I declare under penalty of perjury under the laws of the State of California that the information on both sides of this form and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)

(Financial information on reverse)

(SIGNATURE)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

FINANCIAL INFORMATION

8. ☐ My pay changes considerably from month to month. **[If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.]**
9. **MY MONTHLY INCOME**
- a. My gross monthly pay is: \$ _____
- b. **My payroll deductions are (specify purpose and amount):**
- | | |
|-----------|----------|
| (1) _____ | \$ _____ |
| (2) _____ | \$ _____ |
| (3) _____ | \$ _____ |
| (4) _____ | \$ _____ |
- My TOTAL payroll deduction amount is: \$ _____
- c. My monthly take-home pay is (a. minus b.): \$ _____
- d. Other money I get each month is (specify **source and amount**; include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings):
- | | |
|-----------|----------|
| (1) _____ | \$ _____ |
| (2) _____ | \$ _____ |
| (3) _____ | \$ _____ |
| (4) _____ | \$ _____ |
- The TOTAL amount of other money is: \$ _____
(If more space is needed, attach page labeled Attachment 9d.)
- e. **MY TOTAL MONTHLY INCOME IS**
(c. plus d.): \$ _____
- f. Number of persons living in my home: _____
Below list all the persons living in your home, including your spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:
- | Name | Age | Relationship | Gross Monthly Income |
|-----------|-------|--------------|----------------------|
| (1) _____ | _____ | _____ | \$ _____ |
| (2) _____ | _____ | _____ | \$ _____ |
| (3) _____ | _____ | _____ | \$ _____ |
| (4) _____ | _____ | _____ | \$ _____ |
| (5) _____ | _____ | _____ | \$ _____ |
- The TOTAL amount of other money is: \$ _____
(If more space is needed, attach page labeled Attachment 9f.)
- g. **MY TOTAL GROSS MONTHLY HOUSEHOLD INCOME IS**
(a. plus d. plus f.): \$ _____
10. **I own or have an interest in the following property:**
- a. Cash \$ _____
- b. Checking, savings, and credit union accounts (list banks):
- | | |
|-----------|----------|
| (1) _____ | \$ _____ |
| (2) _____ | \$ _____ |
| (3) _____ | \$ _____ |
| (4) _____ | \$ _____ |
10. c. Cars, other vehicles, and boats (list make, year, fair market value (FMV), and loan balance of each):
- | Property | FMV | Loan Balance |
|-----------|----------|--------------|
| (1) _____ | \$ _____ | \$ _____ |
| (2) _____ | \$ _____ | \$ _____ |
| (3) _____ | \$ _____ | \$ _____ |
- d. Real estate (list address, estimated fair market value (FMV), and loan balance of each property):
- | Property | FMV | Loan Balance |
|-----------|----------|--------------|
| (1) _____ | \$ _____ | \$ _____ |
| (2) _____ | \$ _____ | \$ _____ |
| (3) _____ | \$ _____ | \$ _____ |
- e. Other personal property — jewelry, furniture, furs, stocks, bonds, etc. (list separately):
\$ _____
11. **My monthly expenses not already listed in item 9b above are the following:**
- | | |
|--|----------|
| a. Rent or house payment & maintenance | \$ _____ |
| b. Food and household supplies | \$ _____ |
| c. Utilities and telephone | \$ _____ |
| d. Clothing | \$ _____ |
| e. Laundry and cleaning | \$ _____ |
| f. Medical and dental payments | \$ _____ |
| g. Insurance (life, health, accident, etc.) | \$ _____ |
| h. School, child care | \$ _____ |
| i. Child, spousal support (prior marriage) | \$ _____ |
| j. Transportation and auto expenses (insurance, gas, repair) | \$ _____ |
| k. Installment payments (specify purpose and amount): | |
| (1) _____ | \$ _____ |
| (2) _____ | \$ _____ |
| (3) _____ | \$ _____ |
| The TOTAL amount of monthly installment payments is: \$ _____ | |
| l. Amounts deducted due to wage assignments and earnings withholding orders: | \$ _____ |
| m. Other expenses (specify): | |
| (1) _____ | \$ _____ |
| (2) _____ | \$ _____ |
| (3) _____ | \$ _____ |
| (4) _____ | \$ _____ |
| (5) _____ | \$ _____ |
| The TOTAL amount of other monthly expenses is: \$ _____ | |
| n. MY TOTAL MONTHLY EXPENSES ARE
(add a. through m.): | \$ _____ |
12. Other facts that support this application are (describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12):

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

SAMPLE E

**ORDER ON APPLICATION FOR WAIVER OF COURT FEES
AND COSTS**

Sample E**ORDER ON APPLICATION FOR WAIVER OF COURT
FEES AND COSTS - INSTRUCTIONS**

The Court of Appeal Fifth Appellate District prepares its own order granting or denying the application for waiver of court fees and costs, therefore it is not necessary to provide an order with your application. **[Note: The Court of Appeal can only waive the Court of Appeal filing fee of \$655.00.]**

SAMPLE F**NOTICE DESIGNATING RECORD ON APPEAL**

Sample F

NOTICE DESIGNATING RECORD ON APPEAL - INSTRUCTIONS

After filing your notice of appeal you have 10 days to tell the Superior Court what you want in the record that will be sent to the Court of Appeal; this is called the Notice Designating Record on Appeal. On the next few pages is a form to assist you in designating the record. What you choose to include in your record depends on the issues you wish to raise on appeal. This notice is filed in the Superior Court.

Filling out the Notice Designating Record on Appeal:

Page One (Notice Designating Record on Appeal):

- (1) Your name, mailing address, city, state, zip code and telephone number where you can be reached during the day.
- (2) Name of the Superior Court you are filing the designation in i.e. Fresno, Kern etc.
- (3) The plaintiff's name as it appears on your Superior Court caption.
- (4) The defendant's name as it appears on your Superior Court caption.
- (5) The Superior Court number from your Superior Court case.
- (6) Write the date you filed the notice of appeal.
- (7) The Court of Appeal number which starts with "F0". (If you don't know the Court of Appeal number or one has not yet been assigned, leave this space blank.)
- (8) Your Name. Also, check the box that applies to you. If you are the appellant, check "appellant", if you are responding to someone else's appeal, check "respondent".
- (9) Check only one box.

Check box "1" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 5.1 instead of having the Superior Court prepare a clerk's transcript and you also want a reporter's transcript. If you check this box be sure to fill out the reporter's transcript section on page three; you do not have to fill out page two.

Check box "2" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 5.1 instead of having the Superior Court prepare a clerk's transcript and you don't want a reporter's transcript. If you check this box, there is no need to fill out pages two or three. Date and sign the bottom of this form and you are done.

Check box "3" if you want the Superior Court to prepare both the clerk's transcript and the reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two and the reporter's transcript section on page three.

Check box "4" if you want the Superior Court to prepare a clerk's transcript but you don't want a reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two; you do not have to fill out page three.

(10) Current date.

(11) Type your name or print it legibly.

(12) Your signature.

Page Two (Notice Designating Clerk's Transcript):

Fill out this page only if you checked box "3" or "4" on page one; if you checked box "1" or "2" you do not need to fill out this page. The first six documents are filled in for you. You may designate anything that was in the Superior Court file as part of your record on appeal, choosing as few or as many documents as you wish. What you choose to include in your record depends on the issues you wish to raise on appeal. You will need to make a \$100.00 deposit with the Superior Court if you select this option.

Page Three (Notice Designating Reporter's Transcript):

Fill out this page only if you checked box "1" or "3" on page one; if you checked box "2" or "4" you do not need to fill out this page. A reporter's transcript is a word for word typewritten record of everything that was said in court during a trial or hearing. For each day you want transcribed, write the reporter's name, the department of the Superior Court you were in, the date and the nature of the proceeding. The reporter's transcript costs money. You can ask the reporter to give you an estimate of what it will cost in advance or you can pay \$650 per day for days where there were more than three hours to be transcribed or \$350 per day where there were less than three hours to be transcribed.

Due:	10 days after filing Notice of Appeal
File:	Original with Superior Court Bring an extra copy to be file-stamped for your file.
Serve:	Court Reporter (if reporter's transcript requested) All counsel All self-represented parties

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> (1) TELEPHONE NO. <i>(Optional)</i> FAX NO. <i>(Optional)</i> ATTORNEY FOR <i>(Name):</i>	FOR COURT USE ONLY
(2) SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
PETITIONER/PLAINTIFF: (3) RESPONDENT/DEFENDANT: (4)	
NOTICE DESIGNATING RECORD ON APPEAL	CASE NUMBER (5)
RE: Appeal filed on (date): (6)	COURT OF APPEAL NUMBER (7)

TO: Clerk of the Superior Court, County of **(2)**_____

(Name): **(8)**

☐ Appellant ☐ Respondent

Check only one: (9)

1. ☐ (Appendix and Reporter's Transcript)
 - a. elects under rule 5.1 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
-AND-
 - b. requests a reporter's transcript as designated on page three. *(Fill out the reporter's transcript section on page three.)*
2. ☐ (Appendix Only. No Reporter's Transcript)
 - a. elects under rule 5.1 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
(Date and sign only.)
-AND-
 - b. elects to have no reporter's transcript.
3. ☐ (Clerk's and Reporter's Transcripts) elects under rules 4 and 5 of the California Rules of Court to proceed with a clerk's transcript as designated on page two AND a reporter's transcript as designated on page three. *(Fill out the clerk's transcript section on page two and the reporter's transcript section on page three.)*
4. ☐ (Clerk's Transcript Only. No Reporter's Transcript)
 - a. elects under rule 5 of the California Rules of Court to proceed with a clerk's transcript only as designated on page two. *(Fill out the clerk's transcript section on page two.)*
 - b. elects to have no reporter's transcript.

Date: **(10)**_____

(11)

.....
 (TYPE OR PRINT NAME)

(12)

 (SIGNATURE)

NOTICE DESIGNATING CLERK'S TRANSCRIPT
(Cal. Rules of Court, rule 5)

It is requested that the following documents in the superior court file be included in the clerk's transcript (give the specific title *of the document, and accurate description, and the date of filing*):

(NOTE: Items 1-6 are required to be a part of the clerk's transcript and will automatically be included.)

1. Notice of Appeal
2. Notice Designating Record on Appeal (*this document*)
3. Judgment or order appealed from
4. Notice of Entry of Judgment (*if any*)
5. Notice of Intention to Move for New Trial or Vacate Judgment (*if any*)
6. Ruling on item 5
- 7.

8.

9.

10.

11.

12.

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15.

16.

17.

18.

19.

20.

☐

See additional pages.

	CASE NUMBER:
--	--------------

NOTICE DESIGNATING REPORTER'S TRANSCRIPT
(Cal. Rules of Court, rule 4(a)(1) & 4(a)(4))

Reporter's Name	Dept.	Date	Nature of proceedings
1.			
2.			
3.			
4.			
5.			
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7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			

☐ See additional pages.

SAMPLE G

COVER FOR RULE 5.1 APPENDIX

Sample G**COVER FOR RULE 5.1 APPENDIX
(APPELLANT'S OR RESPONDENT'S)**

No. F012345

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE THREE BEARS,

Plaintiff and Respondent,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal
No. F012345

(Superior Court No. 123456-1)

Appeal From a Judgment of
The Superior Court of California, County of [Name of County i.e. Fresno, Kern]
The Honorable Big Bad Wolf, Judge

APPELLANT'S (or RESPONDENT'S) APPENDIX
IN LIEU OF CLERK'S TRANSCRIPT

Your Name
Your Address
Your Phone Number During the Day

Self-Represented

SAMPLE H

CHRONOLOGICAL INDEX FOR RULE 5.1 APPENDIX

Sample H**CHRONOLOGICAL INDEX FOR RULE 5.1 APPENDIX**

Chronological Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Minute Order	2/15/01	07
Motion for Summary Judgment	4/15/01	08
Separate Statement of Undisputed Facts	4/15/01	20
Opposition to Motion for Summary Judgment	4/28/01	35
Minute Order Denying Summary Judgment	5/15/01	42
Judgment Appealed From	5/30/01	43
Notice of Entry of Judgment	6/02/01	44
Notice of Appeal	6/30/01	45

SAMPLE I

ALPHABETICAL INDEX FOR RULE 5.1 APPENDIX

Sample I**ALPHABETICAL INDEX FOR RULE 5.1 APPENDIX**

Alphabetical Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Judgment Appealed From	5/30/01	43
Minute Order	2/15/01	07
Minute Order Denying Summary Judgment	5/15/01	42
Motion for Summary Judgment	4/15/01	08
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Notice of Entry of Judgment	6/02/01	44
Opposition to Motion for Summary Judgment	4/28/01	35
Separate Statement of Undisputed Facts	4/15/01	20

SAMPLE J

CIVIL CASE INFORMATION STATEMENT

Click on link below for printable form.

Form APP-001 = <http://www.courtinfo.ca.gov/forms/documents/app001.pdf>

Sample J

CIVIL CASE INFORMATION STATEMENT - INSTRUCTIONS

The Civil Case Information Statement must be filed in the Court of Appeal within 10 days after the clerk mails you a notice that the form must be filed. The court recommends that you attach to the Civil Case Information Statement a file-stamped, signed by the judge copy of the order or judgment which you are appealing. You also need to attach a Proof of Service to the Civil Case Information Statement showing you served a copy of the Civil Case Information Statement with its attachment on all counsel and self-represented parties. The Civil Case Information Statement is filed in the Court of Appeal.

Filling out the Civil Case Information Statement form:

- (1) The Appellate District where you are filing your appeal.
- (2) The Division number of the Appellate District where you are filing your appeal.
(Leave Blank the Fifth District does not have divisions)
- (3) Fill in the Court of Appeal case number here. If you do not know the Court of Appeal case number or one has not been assigned yet, leave this space blank.
- (4) Your name, mailing address, city, state, zip code and telephone number where you can be reached during the day.
- (5) The caption of the case as it appears on the Superior Court case.
- (6) The county in which the Superior Court case originated. List the street address, mailing address (if you have it), city, zip code and branch name of the Superior Court where your case originated.
- (7) List the names of all the Superior Court judges who participated in your case.
- (8) Fill in the Superior Court case number here.
- (9) Mark the box that best describes what you are appealing.
- (10) If your appeal disposes of all causes of action including all cross-actions between the parties check "yes". If not, check "no".
- (11) The date of entry of judgment or order appeal from.
- (12) The date notice of entry of the judgment or order was served or mailed. If none was served or mailed, leave this space blank.

(13) Check "yes" if you made a motion for (a) new trial, (b) judgment notwithstanding the verdict, (c) reconsideration of an appealable order or (d) vacating the judgment and that motion was denied. Check the "no" box if you did not make any of the above motions. If you checked yes, write in the type of motion you filed, the date the motion was filed, the date the motion was denied and the date the denial was served.

(14) The date you filed your notice of appeal or cross-appeal in Superior Court.

(15) Check "yes" if you have any other appeals, writs or any other proceeding before this or any other California court. Check "no" if you do not have any other appeals, writs or proceedings before this or any other California court. If you checked "yes", write the name of the court in which you have or had a case, the appellate court case number, the title of the case, name of trial court and trial court case number. If you have or had multiple cases, attach the list of cases to this form on a separate sheet of paper.

(16) Check if there is a bankruptcy case or any court issued stay which would have an affect on your appeal in the Court of Appeal. If you check this box you must attach to this form a file-stamped copy of the bankruptcy petition and any documentation related to the stay. Leave blank if there is no bankruptcy case or other court issued stay which would have an affect on your appeal in the Court of Appeal.

(17) Check the box or boxes that best describe the nature of the action of your case.

(18) Check this box if your case is entitled to calendar preference or priority on appeal. Write the rule of court or statute that entitles you to calendar preference or priority. Leave blank if your case is not entitled to calendar preference or priority.

(19) On a separate sheet of paper, write or type all the parties and their attorneys of record who will participate in the appeal. For each party, list the party's name and designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, list the party the attorney represents, the name of the attorney, state bar number, mailing address, telephone number, fax number and e-mail address. If the party is self-represented, list the name, designation in the trial court proceeding (plaintiff, defendant, etc.), mailing address, telephone number, fax number and e-mail address. List only parties who will be participating in the appeal and no one else.

(20) Today's date.

(21) Your signature.

Due: 10 days after filing Notice of Appeal

File: Original plus one copy of Civil Case Information Statement, judgment or order and Proof of Service on all parties

Provide an extra copy to be file-stamped for your file.

Serve: All counsel
All self-represented parties

CIVIL CASE INFORMATION STATEMENT		Court of Appeal Case Number <i>(if known)</i> :
COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____		FOR COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address)</i> : _____		
TELEPHONE NO.: _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ FAX NO. <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____		
APPELLATE CASE TITLE:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
JUDGES <i>(all who participated in case)</i> :		SUPERIOR COURT CASE NUMBER:
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 10 days after the clerk mails you a notice that this form must be filed. Attach to this form (1) a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 2(c) for definition of "entered"), and (2) proof of service of this form on all parties to the appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2), or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).		

PART I – APPEAL INFORMATION**A. APPEALABILITY**

1. Appeal is from:

- ☐ Judgment after jury trial
☐ Judgment after court trial
☐ Default judgment
☐ Judgment after an order granting a summary judgment motion
☐ Judgment of dismissal under Code Civ. Proc., §§ 581d, 583.250, 583.360, or 583.430
☐ Judgment of dismissal after an order sustaining a demurrer
☐ An order after judgment under Code Civ. Proc., § 904.1(a)(2)
☐ An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
☐ Other *(describe and specify code section that authorizes this appeal)*:

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

☐ Yes ☐ No

If not, please explain why the judgment is appealable:

B. TIMELINESS OF APPEAL *(Provide all applicable dates.)*

1. Date of entry of judgment or order appealed from: ____/____/____
2. Date that notice of entry of judgment or a copy of the judgment was mailed by the clerk or served by a party under Cal. Rules of Court, rule 2: ____/____/____
3. Was a motion for new trial, judgment notwithstanding the verdict, reconsideration, or to vacate the judgment made and denied?
☐ Yes ☐ No If yes, please specify the type of motion:

Date motion filed: ____/____/____ Date denied: ____/____/____ Date denial served: ____/____/____

4. Date notice of
- ☐
- appeal or
- ☐
- cross-appeal filed: ____/____/____

APPELLATE CASE TITLE: 	SUPERIOR COURT CASE NUMBER:
-------------------------------	-------------------------------------

C. APPELLATE CASE HISTORY *(Provide additional information, if necessary, on attachment I.C.)*

Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court? ☐ Yes ☐ No

If yes, insert name of appellate court:

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

D. BANKRUPTCY OR OTHER STAY

☐ Related bankruptcy case or a court-ordered stay affects this appeal. *(Attach a copy of the petition and any stay order.)*

PART II – NATURE OF ACTION

A. Nature of action *(check all that apply):*

1. ☐ Conservatorship
2. ☐ Contract
3. ☐ Eminent domain
4. ☐ Equitable action
 - a. ☐ Declaratory relief
 - b. ☐ Other *(describe):*
5. ☐ Family law
6. ☐ Guardianship
7. ☐ Probate
8. ☐ Real property rights
 - a. ☐ Title of real property
 - b. ☐ Other *(describe):*
9. ☐ Tort
 - a. ☐ Medical malpractice
 - b. ☐ Product liability
 - c. ☐ Other personal injury
 - d. ☐ Personal property
 - e. ☐ Other tort *(describe):*

10. ☐ Trust proceedings
11. ☐ Unfair competition (Bus. & Prof. Code, § 17200)
If this box is checked, refer to rule 15(e)(2), Cal. Rules of Court.
12. ☐ Writ proceedings in superior court
 - a. ☐ Mandate (Code Civ. Proc., § 1085)
 - b. ☐ Administrative mandate (Code Civ. Proc., § 1094.5)
 - c. ☐ Prohibition (Code Civ. Proc., § 1102)
 - d. ☐ Other *(describe):*
13. ☐ Other action *(describe):*

B. ☐ This appeal is entitled to calendar preference/priority on appeal *(cite authority):*

PART III – PARTY AND ATTORNEY INFORMATION

Please attach to this form a list of all the parties and all their attorneys of record who will participate in the appeal. For the parties, include the following information: the party's name and his or her designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, include the following information: name, state bar number, mailing address, telephone number, fax number, and e-mail address.

Date:

This statement is prepared and submitted by:



(SIGNATURE OF ATTORNEY OR UNREPRESENTED PARTY)

SAMPLE K

APPELLANT'S OPENING BRIEF

Sample K

BRIEF - INSTRUCTIONS

Appellant's Opening Brief is due 30 days from the date the record on appeal is filed in the Court of Appeal or 70 days from the date you elected to proceed by way of rule 5.1 with no reporter's transcript. The cover of Appellant's Opening Brief is green. If you are an appellant and you do not file an Appellant's Opening Brief your appeal will be dismissed.

Respondent's Brief is due 30 days from the date the Appellant's Opening Brief is filed. The cover of Respondent's Brief is yellow. If you are a respondent and you do not file a Respondent's Brief, the court will decide the appeal on the record, the opening brief and any oral argument by the appellant. You will not be able to orally argue your case if you are a respondent and don't file a Respondent's Brief.

Appellant's Reply Brief is optional but if you want to file one it is due 20 days from the date the Respondent's Brief is filed. The cover of Appellant's Reply Brief is tan. There is no penalty for not filing an Appellant's Reply Brief.

Each brief must contain a Table of Contents and a Table of Authorities. A brief must not be longer than 14,000 words, or approximately 50 pages. An original plus four copies of the brief must be filed in the Court of Appeal. A proof of service must accompany the brief showing service on the Supreme Court (5 copies), the Superior Court (1 copy), all counsel and self-represented parties.

Cover: Appellant's Opening Brief - green

Respondent's Brief - yellow

Appellant's Reply Brief - tan

File: Original plus 4 copies along with

Proof of Service in Court of Appeal

No. F012345

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE THREE BEARS,

Plaintiff and Respondent,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal
No. F012345

(Superior Court No. 123456-1)

Appeal From a Judgment of
The Superior Court of California, County of (Name of County i.e. Fresno, Kern)
The Honorable ROY BEAN, Judge

APPELLANT'S OPENING BRIEF

Your Name, self-represented
Your Address
Your Phone Number During the Day

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Williams v. Wraxall (1995) 33 Cal.App.4th 120, 132.	2

STATUTES (if any)OTHER

The Restatement 2nd of Torts, section 167.	2
--	---

STATEMENT OF THE CASE ¹

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. (CT 1-3) ² Frightened at discovering Goldilocks, Baby Bear has suffered resulting physical and mental damages in the amount of \$50,000 as testified to by an expert bear/child psychologist. (RT 80-83) ³ After a civil trial on the matter over a period of two days, the court found Goldilocks had committed trespass and awarded Bears \$50,000. (CT 47) ⁴

STATEMENT OF APPEALABILITY

This appeal is from the judgment of the Fresno County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subsection (a)(1).

STATEMENT OF FACTS

[NOTE: Your statement of facts must have references to where in the record the facts can be found.]

Papa Bear lives in Fresno, California with his wife, Mama Bear and son, Baby Bear. Appellant Goldilocks lives a few miles away on the other side of the forest. (RT 10-11) The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (RT 42)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (RT 43-44)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (RT 11) Food was missing from the dining room table. (RT 12) Baby Bear found Goldilocks asleep in his bed. Terrified, Baby Bear screamed and woke up Goldilocks. (RT 35) Startled and confused, Goldilocks ran from the Bears' house. (RT 55)

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the

¹ *Type size must be 13-point or larger. Lines must be at least one-and-a-half spaced. (CRC rule 14(b)(4)&(5))*

² *Cite to pages in record where complaint is located*

³ *Cite to pages in reporter's transcript that contain expert's testimony*

⁴ *Cite to pages in record where court's ruling is located*

phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (RT 80-83)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. She sat down on a bed and fell asleep. (RT 54-55)

ARGUMENT

Issue 1

GOLDILOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"

A. The Standard of Review. The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (Williams v. Wraxall (1995) 33 Cal.App.4th 120, 132.)

B. The Elements of the Action. A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (Gallin v. Poulou (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (Miller v. National Broadcasting Co. (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (Williams v. General Elec. Credit Corp. (1946) 159 Cal.App.2d 527, 532; Rest.2d Torts, section 167.)

C. No Evidence of Wrongful Entry. Here, Goldilocks did not intend to enter on private property. She thought the Bears' house was a public, commercial boarding house. (RT 54-55) Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. (RT 54) All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

CONCLUSION

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry into the house. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

Respectfully submitted,

DATED:

By _____
 (Signature)

 (Your name-printed or typed)

SAMPLE L

**MEMORANDUM OF POINTS AND AUTHORITIES
FOR MOTION TO AUGMENT**

Sample L**MEMORANDUM OF POINTS AND AUTHORITIES
FOR MOTION TO AUGMENT - INSTRUCTIONS**

A Memorandum of Points and Authorities in support of your motion to augment must be attached to the motion to augment. **[NOTE: This memorandum is only a sample. You should give your own reason in paragraph 2 and your own circumstances in paragraph 3 as to why you need to augment the record and why there is no prejudice.]**

Filling out the Memorandum of Points and Authorities Form:

- (1) Today's date.
- (2) Your signature.
- (3) Type or legibly print your name.

File: Original plus 4 copies
(The Memorandum of Points and
Authorities (Sample L) and
Declaration (Sample M) are attached to
the Motion to Augment) along with a
Proof of Service

Provide an extra copy to be file-stamped
for your file.

Serve: Superior Court
All counsel

MEMORANDUM OF POINTS AND AUTHORITIES

AUGMENTATION SHOULD BE ORDERED TO ALLOW APPELLANT TO RECEIVE FULL AND FAIR APPELLATE REVIEW

Rule 12(a) of California Rules of Court permits the augmentation of the appellate record and specifically under Rule 12(a)(1) allows a certified transcript or document not designated under Rule 4 to be augmented and permitted. It is well established that this rule is to be construed liberally. (*People v. Brooks* (1980) 26 Cal.3d 471, 484.)

The need for augmentation here is compelling. Appellant believes the court used the incorrect standard of review. The issue can only be reviewed on appeal if the reporter's transcript of the court's comments before ruling is part of the appellate record.

Not only is augmentation necessary, it will not prejudice any party. The augmentation request concerns documents which were all part of the record. Additionally, the augmentation will not cause a substantial delay in this appeal.

CONCLUSION

For the above reasons, this Court should order the record to be augmented on appeal by including the reporter's transcript or document(s) requested in this motion.

Dated: (1) _____

Respectfully Submitted,

(2) _____

Signature

(3) _____

Type or Print Name

SAMPLE M**DECLARATION IN SUPPORT OF MOTION TO AUGMENT**

Sample M

DECLARATION IN SUPPORT OF MOTION TO AUGMENT - INSTRUCTIONS

A declaration in support of your motion to augment must be attached to the motion.
[NOTE: This declaration is only a sample. You should insert your own reasons in paragraphs 3 and 4 and add your own support for paragraph 6.]

Filling out the Declaration in Support of Motion to Augment form:

- (1) Your name.
- (2) The date of the hearing you want to augment.
- (3) The date of the hearing you want to augment.
- (4) Today's date.
- (5) Month and year.
- (6) City where you signed the declaration.
- (7) Your signature.
- (8) Type or legibly print your name.

File: Original plus 4 copies
(The Memorandum of Points and
Authorities (Sample L) and
Declaration (Sample M) are attached to
the Motion to Augment) along with a
Proof of Service

Provide an extra copy to be file-stamped
for your file.

Serve: Superior Court
All counsel
All self-represented parties

DECLARATION IN SUPPORT OF MOTION TO AUGMENT

I, (1) _____, declare and state as follows:

1. I am a self-represented litigant.
2. On (2) _____, I argued the matter before the Honorable J. Judge. The court reporter reported the matter.
3. I did not order the reporter's transcript of (3) _____, thinking it was unnecessary.
4. I believe the court used the incorrect standard of review. The court's comments before announcing its ruling are material to this issue. The transcript of that hearing is therefore a necessary element of the record on appeal.

If documents attached use 5 below:

5. Because the document(s) requested is attached to this motion, there will be no significant delay, and possibly no delay at all with this appeal.
6. I know of no prejudice to any party as a result of the granting of this motion.
7. This motion is made in good faith for the reasons set forth above and not for the purposes of delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this (4) _____ day of (5) _____, at (6) _____, California.

(7) _____

Signature

(8) _____

Type or Print Name

SAMPLE N

**MOTION TO AUGMENT RECORD ON APPEAL
(DOCUMENTS ATTACHED)**

Sample N

MOTION TO AUGMENT RECORD ON APPEAL (DOCUMENTS ATTACHED) - INSTRUCTIONS

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. You may make a Motion to Augment Record on Appeal (Documents Attached). Attach the documents to your motion to augment that you want added to the record on appeal. The motion is filed in the Court of Appeal. You must file an original plus three copies of the motion, your points and authorities (Sample L) and your declaration (Sample M). You must serve your motion on all parties.

Filling out the Motion to Augment Record on Appeal (Documents Attached):

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "F0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.
- (12) List the documents you are attaching, for example:
 1. Order dated August 20, 2004.
 2. Declaration of John Doe dated August 30, 2004.
- (13) State why you are requesting the item(s) be added. For example, forgot to list it in Notice Designating Record, just learned I need the item to support argument, etc.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original and 4 copies with
Court of Appeal
(The Memorandum of Points and
Authorities (Sample L) and
Declaration (Sample M) are attached to
the Motion to Augment) along with a
Proof of Service

Provide an extra copy to be file-stamped
for your file.

Serve: All counsel
All self-represented parties

(1)
(2)
(3)
(4)

COURT OF APPEAL, FIFTH APPELLATE DISTRICT

STATE OF CALIFORNIA

(5) _____,

Plaintiff and (6) _____,

v.

(7) _____,

Defendant and (8) _____.

F (9) _____.

(Superior Court No. (10) _____)

MOTION TO AUGMENT RECORD ON
APPEAL (DOCUMENTS ATTACHED)

Pursuant to Rule 12(a) of the California Rules of Court, I,
(11) _____, request augmentation of the record
on appeal to include documents in this case that were not included in the Clerk's Transcript.
Copies of the documents to be added to the record are attached to this motion. Those documents
are:

(12)

(13)

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California this (14) _____ day of (15) _____.

(16) _____

Signature

(17) _____

Type or Print Name

SAMPLE O

**MOTION TO AUGMENT RECORD ON APPEAL
CLERK'S AND/OR REPORTER'S TRANSCRIPTS
(DOCUMENTS REQUESTED)**

Sample O**MOTION TO AUGMENT RECORD ON APPEAL
CLERK'S AND/OR REPORTER'S TRANSCRIPTS
(DOCUMENTS REQUESTED)
INSTRUCTIONS**

After the record on appeal is filed, you might discover there is something missing from the record that you think the court should consider when deciding your case. If you do not have copies of the documents you want to include, you may make a Motion to Augment Record on Appeal (Documents Requested). The motion with points and authorities (Sample L) and your declaration (Sample M) is filed in the Court of Appeal. You must file an original plus three copies. You must serve your motion on the Superior Court, all counsel and all self-represented parties. If the court grants your motion, the Superior Court clerk will give you an estimate of how much it will cost to copy the documents you list to be included in the record. You have five days from the date you are given the estimate to pay it in Superior Court. If you do not pay it, you will be placed in default.

Filling out the Motion to Augment Record on Appeal (Documents Requested):

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number which begins with "F0".
- (10) The Superior Court number from your Superior Court case.
- (11) Your name.

(12) List the documents and/or transcripts you are requesting, for example:

1. Order dated August 20, 2004.
2. Declaration of John Doe dated August 30, 2004.
3. Hearing on June 15, 2004 from 9:00 a.m. to 11:30 a.m. Court reporter is John Doe.
4. Hearing on June 16, 2004, all day beginning at 9:00 a.m. Court reporter is Jane Doe.

(13) State why you are requesting the item(s) be added. For example, forgot to include it in Notice Designating Record, etc.

(14) Today's date.

(15) Month and year.

(16) Your signature.

(17) Type or legibly print your name.

File: Original plus 4 copies with
Court of Appeal
(The Memorandum of Points and
Authorities (Sample L) and
Declaration (Sample M) are attached to
the Motion to Augment) along with a
Proof of Service

Provide an extra copy to be file-stamped
for your file.

Serve: Superior Court
All counsel
All self-represented parties

(1)
(2)
(3)
(4)

COURT OF APPEAL, FIFTH APPELLATE DISTRICT

STATE OF CALIFORNIA

(5)

Plaintiff and (6)

v.

(7)

Defendant and (8)

F(9)

(Superior Court No. (10))

MOTION TO AUGMENT RECORD ON
APPEAL (DOCUMENTS REQUESTED)

Pursuant to Rule 12(a) of the California Rules of Court, I,
(11) , request augmentation of the record
on appeal to include documents in this case that were not included in the Clerk's and/or
Reporter's Transcript. Those documents are:

(12)

The reason I am requesting the items(s) is:

(13)

I declare under penalty of perjury that the foregoing is true and correct.

Executed at , California this (14) day of (15) .

(16)

Signature

(17)

Type or Print Name

SAMPLE P**APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF**

Sample P**APPLICATION FOR EXTENSION OF TIME
TO FILE BRIEF - INSTRUCTIONS**

If you cannot file your brief on time, ask the opposing party to stipulate to an extension. Stipulations of up to 60 days result in automatic extensions and need only to be filed in the Court of Appeal. If you have already had 60 days in extensions or are unable to get the opposing party to stipulate, you then need to ask the Court of Appeal for an extension of time before the time your brief is due. You need to file an original application accompanied by stamped-addressed envelopes and copies of the request for yourself and each party. You must serve a copy of your request on all parties before filing the application with the Court of Appeal.

Filling out the Application for Extension of Time to File Brief form:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal number which begins with "F0".
- (10) The Superior Court number from your Superior Court case.
- (11) Write the type of brief for which you are requesting an extension of time. For example, "Appellant's Opening", "Respondent's" or "Appellant's Reply".
- (12) Write the type of brief for which you are requesting an extension of time. For example, "Appellant's Opening", "Respondent's" or "Appellant's Reply".
- (13) Write the date you would like your brief due. Hint: Do not ask for more than 60 days and do not leave the date open-ended.
- (14) Write the date your brief is presently due.

- (15) If you have received a rule 17 notice write "has". If you have not received a rule 17 notice write "has not".
- (16) Write the number of extensions you have received. If you have not received any extensions, write "no".
- (17) Write the number of days extension you have already received.
- (18) Write the reason you are unable stipulate to an extension.
- (19) Write the reason you need more time to file your brief.
- (20) Today's date.
- (21) Month and year.
- (22) Your signature.
- (23) Type or legibly print your name.

File: Original with a Proof of Service
on all counsel and self-represented parties
(if you are an attorney, serve your client)
(CRC rule 45(f))
together with copies and preaddressed,
stamped envelopes for each party.

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

(1)
(2)
(3)
(4)

COURT OF APPEAL, FIFTH APPELLATE DISTRICT
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

F(9) _____
(Superior Court No. (10) _____)
APPLICATION FOR EXTENSION OF
TIME TO FILE (11) _____.

I request the time to file (12) _____ Brief be extended to (13) _____.

Present due date is (14) _____.

Notice under rule 17 (15) _____ issued.

(16) _____ extensions totaling (17) _____ have been received.

I am unable to stipulate to an extension because (18) _____.

The reason I need an extension is (19) _____,

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California this (20) _____ day of (21) _____.

(22) _____
Signature

(23) _____
Type or Print Name

SAMPLE Q

PETITION FOR REHEARING

Sample Q

PETITION FOR REHEARING - INSTRUCTIONS

After the opinion has been filed in your case, or a request for publication granted or modification of opinion changing judgment, you have 15 days to ask the Court of Appeal for a rehearing. You ask for a rehearing if you feel that the opinion misstates the facts, has an error of law, has a significant omission in the facts or law or failed to consider an important argument. The petition for rehearing has an orange cover. An original plus four copies of the petition for rehearing must be filed in the Court of Appeal. A proof of service showing service on the Supreme Court, the Superior Court and all counsel and self-represented parties must accompany the petition for rehearing.

Filing out the Cover Page:

- (1) The plaintiff's name as it appears on your Superior Court caption.
- (2) Whether plaintiff is "appellant" or "respondent".
- (3) The defendant's name as it appears on your Superior Court caption.
- (4) Whether defendant is "appellant" or "respondent".
- (5) The Court of Appeal case number which begins with "F0".
- (6) The Superior Court number from your Superior Court case.
- (7) Write the county where the Superior Court case originated.
- (8) The name of the Superior Court judge.
- (9) Your name.
- (10) Your mailing address.
- (11) Your city, state and zip code.
- (12) Your telephone number where you can be reached during the day.

Filling out the Petition for Rehearing:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.

- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number.
- (10) The Superior Court number from your Superior Court case.
- (11) Write whether you are "appellant" or "respondent".
- (12) Your name.
- (13) The date the opinion was filed.
- (14) Why you think there should be a rehearing.
- (15) The arguments in support of your reason why there should be a rehearing.
- (16) Write "affirm", "reverse" or "modify", however you think the court should have ruled in its opinion.
- (17) Current date.
- (18) Your signature.
- (19) Type or legibly print your name.

Due: 15 days after opinion filed, or request for publication granted or modification of opinion changing judgment.

Cover Color: Orange

File: Original plus 4 copies with Court of Appeal with Proof of Service

Provide an extra copy to be file-stamped for your file.

Serve: California Supreme Court - 5 copies
Superior Court - 1 copy
All counsel
All self-represented parties

COURT OF APPEAL, FIFTH APPELLATE DISTRICT
STATE OF CALIFORNIA

(1) _____,

Plaintiff and (2) _____,

v.

(3) _____,

Defendant and (4) _____.

F(5) _____.

(Superior Court No. (6) _____)

Appeal From the Superior Court of (7) _____ County
Honorable (8) _____, Judge

PETITION FOR REHEARING

(9)

(10)

(11)

(12)

Self-Represented

(1)
(2)
(3)
(4)

COURT OF APPEAL, FIFTH APPELLATE DISTRICT
STATE OF CALIFORNIA

(5) _____,

Plaintiff and (6) _____,

v.

(7) _____,

Defendant and (8) _____.

F(9) _____.

(Superior Court No. (10) _____)

PETITION FOR REHEARING

(11) _____, (12) _____, seeks rehearing of the
court's opinion in the above case filed on (13) _____. The rehearing is necessary
because (14) _____.

(15)

CONCLUSION

Petitioner requests that rehearing be granted and that the court (16) _____,
the judgment.

DATED: (17) _____

(18) _____

Signature

(19) _____

Type or Print Name